M-10670

INTERSTATE COMMERCE COMMISSION

DECISION AND ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, *Commissioners Walrath, Webb, and Tucker* (Commissioner Walrath did not participate) held at its office in Washington, D.C., on the 27th day of October A.D. 1961.

No. MC-115495 (SUB-No. 3)

UNITED PARCEL SERVICE, INC., EXTENSION—MIDWESTERN STATES

(Cincinnati, Ohio)

Upon consideration of the application and record in the above-entitled proceeding, including the examiner's report and recommended order, the exceptions filed thereto by Railway Express Agency, Inc., and jointly by Orscheln Bros. Truck Lines, Inc., L. A. Tucker Truck Lines, Inc., and Sloan's Moving and Storage Co., Inc., and applicant's reply, and

It appearing, That the exceptions and reply raise no new or material matters of fact or law not adequately considered and properly disposed of by the examiner in his report, and are not of such nature as to require the issuance of a report by Division 1 discussing the evidence in the light of such pleadings;

And it further appearing, That the examiner recommended the granting to applicant of a certificate of public convenience and necessity, authorizing the operations described in the appendix hereto;

Wherefore, and good cause appearing therefor:

We find, That the exceptions filed herein are without merit; and that the statement of facts, the conclusions, and the findings of the examiner being proper and correct in all material respects, should be, and they are hereby, affirmed and adopted as our own; and

It is ordered, That the said application for a certificate, except to the extent granted in said report, be, and it is hereby, denied.

It is further ordered, That upon compliance by applicant with the requirements of sections 215, 217, and 221(c) of the Interstate Commerce Act, and with our rules and regulations thereunder, within the time specified in the next succeeding paragraph, an appropriate certificate will be issued.

And it is further ordered, That unless compliance is made by applicant with the requirements of sections 215, 217, and 221(c) of the Interstate Commerce Act within 90 days after the date of service hereof, or within such additional time as may be authorized by the

111537-63——1

684373

Commission, the grant of authority made herein shall be considered as null and void and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

By the Commission, division 1.

[SEAL] HAROLD D. MCCOY,
Secretary.

APPENDIX TO DECISION AND ORDER

Service authorized:

Operation as a common carrier by motor vehicle, over irregular routes of general commodities, except those of unusual value, class A and class B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between all points in a territory comprised of the following States or portions thereof as follows: Illinois, Indiana, Ohio; that portion of Michigan within an area described as follows: From Detroit north along the Michigan State line to Port Huron, thence westerly along Michigan Highway 21 to Davison; thence northerly along Michigan Highway 15 to Bay City; thence westerly along Michigan Highway 20 to Mount Pleasant; thence southerly along U.S. Highway 27 to U.S. Highway 27 (alternate); thence southerly along U.S. Highway 27 (alternate) to Alma; thence easterly along U.S. Highway 27 (alternate) to U.S. Highway 27; thence southerly along U.S. Highway 27 to Ola; thence westerly along Michigan Highway 57 to the eastern boundary of Kent County; thence along the eastern and northern boundaries of Kent County to the northern boundary of Muskegon County; thence along the northern and eastern boundaries of Muskegon County (including all of Kent and Muskegon Counties) to Lake Michigan; thence southerly along the Michigan State line to the Indiana State line; thence easterly along the Michigan State line to Lake Erie; and thence northerly along the Michigan State line to Detroit; that portion of Wisconsin within an area described as follows: Beginning at the Illinois-Wisconsin State line at Lake Michigan and extending northerly along the shore of Lake Michigan to and including Two Rivers; thence northerly on Wisconsin Highway 147 to U.S. Highway 141; thence northerly on U.S. Highway 141 to and including Green Bay; thence southerly on U.S. Highway 41 to the northern boundary of Fond du Lac County; thence westerly and southerly along the northern and western boundaries of Fond du Lac County to the northern boundary of Dodge County; thence westerly and southerly along the northern and western boundaries of Dodge County to U.S. Highway 151; thence southwesterly on U.S. Highway 151 to the northern boundary of Dane County; thence along the northern, western, and southern boundaries of Dane County to the western boundary of Rock County; thence southerly along the western boundary of Rock County to the Wisconsin-Illinois State line; and thence easterly along such line to Lake Michigan; that portion of Missouri within an area described as follows: From St. Louis northwesterly along the Mississippi River to Hannibal, Mo.; thence northerly along Missouri Highway 168 to U.S. Highway 24-61; thence southerly along U.S. Highway 24-61 to U.S. Highway 36; thence easterly along U.S. Highway 36 to U.S. Highway 61; thence southerly along U.S. Highway 61 to Missouri Highway 19; thence southwesterly and southerly along Missouri Highway 19 to U.S. Highway 54; thence westerly along U.S. Highway 54 to Missouri Highway 22; thence westerly along Missouri Highway 22 to U.S. Highway 63; thence northerly along U.S. Highway 63 to U.S. High-

way 24; thence westerly along U.S. Highway 24 to Missouri Highway 3; thence southerly along Missouri Highway 3 to Missouri Highway 240; thence southerly along Missouri Highway 240 to the Missouri River; thence southeasterly along the Missouri River to Jefferson City; thence southeasterly along U.S. Highway 63 to Rolla; thence easterly along U.S. Highway 63 to U.S. Highway 66; thence easterly along U.S. Highway 66 to Missouri Highway 68; thence southerly along Missouri Highway 68 to Missouri Highway 8; thence easterly along Missouri Highway 8 to Missouri Highway 21; thence southerly along Missouri Highway 21 to Missouri Highway 72; thence southeasterly along Missouri Highway 72 to the Mississippi River; thence northwesterly along the Mississippi River to the point of beginning; and Davenport, Clinton, and Dubuque, Iowa, including all points on the described highways and those on the described county lines which do not coincide with State lines.

Subject to the following restrictions and condition:

(a) No service shall be rendered in the transportation of any package or article weighing more than 50 pounds or exceeding 108 inches in length and girth combined, and each package or article shall be considered as a separate and distinct shipment.

(b) No service shall be rendered between department stores, specialty shops, and retail stores and the branches or warehouses of such stores; or between department stores, specialty shops and retail stores or the branches or warehouses thereof, on the one hand, and, on the other, the premises of the customers of such stores.

(c) No service shall be provided in the transportation of packages or articles weighing in the aggregate more than 100 pounds from one consignor at one location to one consignee at one location on any one day.

(d) That no delivery service shall be provided under the authority granted herein to the premises of persons who or which have entered into contracts with applicant and are served by it pursuant to permits issued by the Commission.

(e) That the certificate granted herein shall be subject to the right of the Commission which is hereby expressly reserved to impose such terms, conditions, or limitations in the future as it may find necessary in order to insure that applicant's operations shall conform to the provisions of section 210 of the Interstate Commerce Act.

The statement of facts, conclusions, and findings of the examiner follow:

By application, filed January 4, 1960, as amended, United Parcel Service, Inc., of Cincinnati, Ohio, seeks a certificate of public convenience and necessity authorizing operation as a common carrier by motor vehicle, over irregular routes, of general commodities, except those of unusual value, class A and class B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between the points in the territory described in appendix A hereto, subject to the restrictions specified therein.

The application was referred to the examiner for hearing and recommendation of an appropriate order thereon. Hearing was held at Chicago, Ill., from May 9 to May 27, 1960, and from August 8 to August 20, 1960, and at Washington, D.C., from July 25 to August 1, 1960. Fischer Trucking Co., L. A. Tucker Truck Lines, Inc., Sloan's Moving & Storage Co., Sanders Truck Line, Inc., C. E. S. Truck Lines, Inc., Orscheln Bros. Truck Lines, Inc., Cordera Transfer Com-

pany, Inc., Illinois Motor Express, Inc., Paul J. McCoy, doing business as McCoy Transfer Company, Charles Ohley, Edmund C. Ohley, and Harold L. Ohley, doing business as Ohley Transfer Company, Slay Transportation Co., Inc., Olive Wiles, doing business as R. E. Wiles Truck Service, Northwest Drayage Company, M. C. Slater, Inc., Haecki's Express, Incorporated, and Motor Freight Corporation originally appeared in opposition to the application, but Cordera Transfer Company, Inc., Illinois Motor Express, Inc., Paul J. McCoy, doing business as McCoy Transfer Company, Charles Ohley, Edmund C. Ohley, and Harold L. Ohley, doing business as Ohley Transfer Company, Slay Transportation Co., Inc., Olive Wiles, doing business as R. E. Wiles Truck Service, Northwest Drayage Company, M. C. Slater, Inc., Motor Freight Corporation, and Haecki's Express, Incorporated, withdrew their opposition to the application during the course of the hearing.

APPLICANT'S EVIDENCE

Applicant presently holds authority to operate as a common carrier by motor vehicle, over irregular routes, of general commodities, except those of unusual value, class A and class B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, over irregular routes, from Chicago to Davenport, Clinton, and Dubuque, Iowa, and described areas in southwestern Michigan, northern Indiana, southeastern Wisconsin, and northern Illinois, as more specifically described in appendix B to this report. This authority is restricted against the transportation of packages or articles weighing more than 50 pounds or exceeding 108 inches in length and girth combined, and for the purpose of the restriction each package or article is considered as a separate and distinct shipment. It is also restricted against the rendition of service between retail stores and the branches or warehouses of such stores, or between retail stores and the branches and warehouses thereof, on the one hand, and, on the other, the premises of customers of such stores. Applicant also performs parcel delivery service as a common carrier, in intrastate commerce, between points in Illinois, between points in a described area in southeastern Wisconsin, between points in a described area in eastern Missouri, and from Cleveland, Cincinnati, and Toledo, Ohio, to all points in Ohio. It has an application pending with the Public Utility Commission of Ohio for authority to provide such service between all points in Ohio. In addition, an affiliate, United Parcel Service, Inc., an Indiana corporation, performs similar service, in intrastate commerce, between all points in Indiana, and another affiliate, United Parcel Service of Detroit, Inc., renders such service between points in a described area in southern Michigan. The areas in Michigan and Missouri served in intrastate commerce are the same as the portions of those States sought herein. The area in Wisconsin served in intrastate commerce is nearly the same as the portion of that State sought herein. Applicant was issued a certificate recently authorizing a service similar to that proposed herein between certain points in California, on the one hand, and certain points in Arizona, on the other, over irregular routes. In view of the distance between the territories involved in the two operations, the west coast authority need not be further described.

Applicant also holds authority to operate as a contract carrier by motor vehicle, over irregular routes, transporting (1) such commodities as are sold by retail department stores, between Cincinnati, Ohio, on the one hand, and, on the other, points in that part of Kentucky north of a line beginning at Grant, Ky., and extending in an easterly direction to Oneonta, Ky., and (2) new furniture and household furnishings as are sold by retail specialty shops and department stores, between such retail specialty shops and department stores and branches

and warehouses thereof, in Cincinnati, Ohio, on the one hand, and, on the other, the customers of such shops and stores at points in Kentucky and in that part of Indiana south of a line beginning at the Indiana-Illinois State line and extending along U.S. Highway 36 through Indianapolis, Ind., to its junction with Indiana Highway 67 near Pendleton, Ind., thence along Indiana Highway 67 through Muncie, Ind., to Portland, Ind., and thence along Indiana Highway 26 to the Indiana-Ohio State line. The service authorized in (1) and (2) above, is restricted to that performed under special and individual contracts or agreements with persons (as defined in section 203(a) of the Interstate Commerce Act) who operate retail specialty shops or department stores, for the transportation of the commodities indicated and in the manner specified above. In connection with (1) above, applicant serves about 50 retail department stores in Cincinnati in effecting deliveries of their merchandise to a contiguous area in Kentucky extending about 3 or 4 miles beyond the limits of the Cincinnati commercial zone as defined by the Commission. During 1959, about 3,978,000 packages were delivered by applicant in retail department store delivery service, of which about one-third of 1 percent moved to the Kentucky points beyond the Cincinnati commercial zone. Applicant serves six stores under the authority described in (2) above. During 1959 about 382,000 pieces of new furniture and household furnishings were delivered by applicant, of which about one-half of 1 percent were destined to points in the Indiana territory described above and about 2 percent moved to points in Kentucky beyond the Cincinnati commercial zone. The normal delivery area for this operation in interstate commerce is to points in all or portions of Union, Fayette, Franklin, Dearborn, Ripley, and Switzerland Counties, Ind., and Boone, Kenton, Campbell, Gallatin, Grant Pendleton, and Bracken Counties, Ky. Service is rendered once a week to points in these counties. Less frequent deliveries are effected to points beyond such counties in the authorized Indiana territory and in Kentucky. Applicant's vice president estimates that about 1,250 packages a day will be delivered to Cincinnati consignees in the proposed operation, of which about 1 percent will be delivered to stores under contract with applicant. In the proposed operation, shipments to stores in Cincinnati will be prepaid by the manufacturers or wholesale houses with whom such shipments originate. Applicant's contract carrier service is designed so that it, in effect, takes over the functions normally assumed by the delivery departments of the retail stores served and in some instances the motor vehicle equipment owned by such stores was purchased by applicant when it commenced serving them. Applicant provides similar contract carrier delivery service for retail department stores and retail specialty shops in Chicago, Milwaukee, Wis., and Cleveland, Ohio, but these operations are only performed in intrastate commerce.

Applicant is affiliated with nine other companies commonly owned and controlled by United Parcel Service of America, Inc., hereinafter called the parent company. They operate in various parts of the United States under the United Parcel Service designation and perform two types of parcel delivery service, hereinafter referred to as the retail service and the wholesale service, respectively. The retail service is performed as a contract carrier operation for various retail stores and is a store delivery service similar to that performed by applicant for stores at Cincinnati, previously described herein. The wholesale service is a common carrier service involving principally the delivery of small packages from manufacturers, wholesalers, and distributors to their customers. This is the type of service which applicant now performs under its common carrier authority from Chicago and which it proposes to render under the certificate sought herein. None of applicant's affiliates operate in interstate commerce from or to points in the territory involved herein. Two of the affil-

lated companies, United Parcel Service, a California corporation, and United Parcel Service of Detroit, Inc., will be merged into applicant. The stock of the parent company is owned by about 900 employees, former employees, or families or estates of former employees, with no single stockholder owning as much as 9 percent of the total stock.

At the present time the United Parcel Service companies have a total of 10,000 employees, of which 2,700 are employed in the territory involved in this application. The companies which operate in the territory involved herein, namely, applicant, United Parcel Service, Inc., an Indiana corporation, and United Parcel Service of Detroit, Inc., own and operate 2,145 vehicles in such territory. The basic trucks used for pickup and delivery of parcels consist of panel delivery trucks with a capacity just under 400 cubic feet, supplemented by smaller Volkswagen package cars, comprising a total of 1,297 units. These are supplemented by about 254 larger trucks of similar design of less than 1,000 cubic foot capacity and 5 similar trucks of over 1,000 feet capacity. About 235 additional trucks are designed for the transportation of furniture. The remaining units consist of 109 tractors and 225 trailers of a heavier character. All of the units have been designed to facilitate expeditious and safe loading and unloading of packages and to protect this type of freight from damage in transit. If the application is granted, applicant expects that its motor vehicle equipment will have to be increased by 15 to 20 percent.

A balance sheet of applicant as of December 31, 1959, shows total assets of $6,446,433, including $3,122,204 of current assets. Current liabilities amount to $2,135,542 and surplus to $1,904,591. An income statement of applicant for the period from January 1 to December 31, 1959, shows a net operating revenue of $900,370. A pro forma balance sheet of applicant and the two affiliates[1] which will be merged into applicant shows total assets of $15,133,910, including current assets of $6,815,864. Current liabilities amount to $4,286,206 and surplus to $5,240,304. A consolidated balance sheet of United Parcel Service of America, Inc., and its subsidiary companies as of December 31, 1959, shows total assets of $33,238,007, including current assets of $16,539,491. Current liabilities amount to $10,121,198 and surplus to $13,457,684. Applicant has a good safety and preventive maintence program.

Applicant divides the territories which it serves into operating areas within each of which there is established an operating center. The operating center is a terminal type facility at which panel trucks and drivers are stationed for the pickup and delivery of packages throughout the area served by the center. An automatic pickup call is made at the premises of each shipper within the operating area requesting that service, and the packages received are handled through the operating center. All packages for delivery within the operating area in which they are picked up are held overnight at the center for delivery the following day. Packages for delivery in other operating areas are delivered to central sorting hubs established at strategic locations throughout the territory served. At these hubs packages for each destination operating center are consolidated and transported thereto. Deliveries are then effected in the equipment and by the drivers employed at the operating center. At the present time, applicant has operating centers established at the following number of points in the States[2] involved in the application: Illinois 33, Indiana 19, Ohio

[1] United Parcel Service, a California corporation, and United Parcel Service of Detroit, Inc.

[2] For convenience reference hereinafter to States in the proposed territory refers only to that portion of each State included in such territory unless the entire State is embraced therein.

19, Michigan 17, Wisconsin 11, and Missouri 6. Hubs are now maintained at Milwaukee, Wis., Chicago and Decatur, Ill., St. Louis, Mo., Indianapolis, Ind., Cincinnati, Toledo, Columbus, and Cleveland, Ohio, and Detroit and Lansing, Mich. The number and boundaries of operating areas, the locations of operating centers, and the number of locations of central hubs are changed from time to time as volume patterns change or as engineering studies show changes are warranted. It is expected that if the application herein is granted, new operating areas and several new hubs will be created as a result of the additional volume of traffic which will be received. Some adjustments in boundary lines of operating areas also will be made because of the geater flexibility in operation which applicant will have as a result of a nonradial grant of interstate authority.

Most of the buildings housing the hubs and the operating centers are owned by real estate companies, whose ultimate ownership is for the benefit of the stockholders of United Parcel Service of America, Inc. Applicant and the two other United Parcel Service operating companies operating in the proposed territory lease these properties from such real estate companies. The total cost of the land and buildings leased from the affiliated real estate companies is $5,800,000. Some of the smaller buildings used as operating centers are leased from non-affiliated owners by the operating companies. The latter also own facilities other than motor vehicles in the considered territory costing $2,600,000.

Specialized facilities for the handling of packages include extended and retractable conveyors used in unloading pickup cars, conveyor belts or walker tables to move packages from unloading positions to sorting positions, electric eyes which control movement of feed belts to the sorter, recirculating crescent conveyors which carry packages around corners without damage, and automated traveling chute conveyors.

All shipments transported by applicant are handled on a prepaid basis. Applicant does not require that a shipper fill out a bill of lading for each package transported. Instead the shipper on each day lists upon a pickup record the name and address of the consignee for each package turned over to applicant, with certain other pertinent information, and this record is signed as a receipt by the driver. The driver and the shipper each retain a copy of this document, and the latter is billed for transportation performed from the information thereon. Packages are handled and delivered from the information set forth on the address label, and special labels are provided for c.o.d. and returned package shipments. Each delivered package is signed for by the consignee on a driver's delivery sheet which is kept by applicant for tracing purposes.

Applicant sent out 13,668 forms to shippers using its daily pickup service in the proposed territory requesting that they list the origin and destination of all shipments transported by parcel post on Thursday, November 5, 1960. It received 13,457 responses to this request. It also received 1,027 tallies by shippers in the proposed territory showing their parcel post shipments to 11 areas designated by applicant comprising this territory. Its representatives also called upon 1,081 other shippers in the proposed territory and obtained estimates of their use of parcel post. The results of these studies, with one exception hereinafter discussed, are not shown of record, but they were referred to by applicant's vice president as some of the factors which he took into consideration in making an estimate of the number of additional packages which would be received for transportation from and to points in the proposed territory if the application herein is granted. Other factors mentioned by him which were considered in making this estimate were the testimony which he had heard

given by 401 shippers located in the involved territory regarding their shipping practices, adduced in support of applications by applicant before State Commissions and the Interstate Commerce Commission, and statistics published by the United States Department of Commerce. He has been employed by the United Parcel Service organization for about 35 years. Based upon the matters referred to above and his experience, the witness estimated that the proposed operation in interstate commerce would result in applicant's transporting about 50,000 additional packages a day. He also asserts that the traffic which is obtained by applicant when it commences a new operation is diverted principally from parcel post, and that, in addition, a volume is derived from that formerly transported by shippers in private carriage and from new business engendered by the extension of shippers' sales areas as a result of applicant's service becoming available.

An important feature of applicant's proposal is the providing of service at rates comparable to those for uninsured parcel post. In view thereof, evidence was presented with respect to applicant's estimates of cost and revenue per package in the proposed operation, and the basis therefor was the subject of extended cross-examination. In this connection, applicant's vice president estimates that the average cost of transportation involved in the proposed operation in interstate commerce will be 68 cents per package. This estimate is based upon his computation as to pickup expense, transfer expense, central sorting expense, delivery expense, and management and general expense involved in the handling of the increased volume of packages anticipated in the proposed operation. The meaning of the terminology used by the witness will be next considered. In general, pickup expense includes all of the cost of handling a package from the time it is received from the shipper until it reaches the first operating center and is unloaded from the pickup vehicle. Transfer expense is that incurred in moving the package from the operating center involved in the pickup to the first sorting hub, plus the expense of moving it between hubs, if more than one sorting is required, plus the expense of transferring it to the final operating center from which delivery is effected. Central sorting expense is that involved in the sorting of packages delivered to the hub from various operating centers and combining them for transfer to each of the operating centers from which delivery is effected. Where the packages move through two hubs, the cost of both sorts is included in this expense. Delivery expense is that incurred in the movement of a package from the operating center to which the package is transferred to the consignee. Management and general expense is self-explanatory and was computed by taking the same percentage of the revenue received as is taken in connection with applicant's present operations.

In making the 68 cents per package estimate, applicant's vice president anticipated that the bulk of the traffic received in the proposed operation would be obtained from customers presently using applicant's service or that of its affiliates in intrastate commerce. Reliance also was placed upon the estimate which the witness had previously made with reference to the receipt of an anticipated volume of 50,000 packages a day in the proposed operation. Although not introduced in evidence at the time the latter estimate was made, a compilation[9] of the 13,457 responses to forms which were sent out to shippers now using applicant's daily pickup service listing the origin and destination of all of their packages transported by parcel post on November 5, 1960, insofar as such packages moved in interstate commerce within the scope of the application, was received in evidence by stipulation of the parties. This compilation was used not only in

[9] Hereinafter referred to as the 1-day survey.

estimating the number of additional packages a day which would be transported in the proposed operation but also in ascertaining the amounts of the various items of expense comprising the 68 cents per package cost estimate. More than 50,000 packages moving within the scope of the application were listed in this compilation. Generally speaking, the estimated cost items comprising the 68-cent estimate were derived from a cost analysis of various operations involved in the transportation and handling of these packages in combination with applicant's present volume of packages and packages which it anticipates that it will be transporting under a grant of new intrastate authority in Ohio.

A breakdown of applicant's 68-cent per package cost estimate by functions is as follows: Pickup 6.2 cents, transfer 13 cents, central sorting 5.9 cents, delivery 30.7 cents, and management and general 12.2 cents. Applicant's present average expense for transporting a package is as follows: Pickup 8.3 cents, central sorting 3.2 cents, transfer 5.8 cents, delivery 34.5 cents, and management and general the same as above. As seen, percentagewise there is a fairly substantial reduction in pickup expense and a slight reduction in delivery expense in the estimated costs in comparison with the present costs. The lower estimated pickup cost is predicated upon applicant's anticipation that the additional packages obtained from a grant of authority herein will be from customers presently using the intrastate service provided by it or its affiliates and the conclusion that the new anticipated volume of packages moving in interstate commerce superimposed upon the present volume moving in intrastate commerce will increase the number of packages picked up at each stop. Delivery expense is not an item, which on a per package basis, will be much affected by the increased volume involved in the proposed operation, since the distances involved in the delivery movements will not change. The items principally affected are the transfer and central sorting costs, due to the longer distance and increased handling involved in the transportation of packages in interstate commerce. In making these estimates, applicant's vice president estimated that an average of 1.86 central sorts per package would be involved in the movement of packages in interstate commerce, compared to an average of about one central sort per package in the present movement of intrastate traffic.

Applicant's vice president estimates that the average revenue per package obtained from the proposed operation will be 75.5 cents. Matters taken into consideration in making this estimate were (1) average weight per package handled of 10.3 pounds in the present operations in the proposed territory, (2) proportions of package deliveries in the various parcel post rate zones as shown by the responses of 13,457 shippers in the 1-day survey previously referred to, (3) rates per package and per pound based on applicant's present rate structure applied to such packages, and (4) the extra charge per package for the handling of c.o.d packages. The rate level referred to in (3) consists of charges of 19 cents per package; 4 cents a pound or fraction thereof to packages moving to points in parcel post zones 1 and 2; 5 cents per pound on packages moving to points in parcel post zone 3; and 7 cents per pound on packages moving to points beyond parcel post zone 3. In addition, applicant has a weekly charge of $2 for an automatic daily pickup call. A charge of 25 cents is made for each c.o.d. collection. The estimated average amount of revenue per package which will be obtained from each of these charges is as follows: Per package charge 19 cents, c.o.d. charge 0.625 cents, automatic daily call service charge 3.9 cents, and poundage charge 52 cents.

The principal features of the proposed service are as follows: (1) automatic daily pickup, for which a $2 per week service charge is made, (2) deliveries

111537—63——2

to points in the proposed destination territory within 100 miles of the point of origin will be made on a next-day basis and to the remainder of the area proposed to be served on not later than a second-day basis, (3) deliveries directly into the premises of consignees, (4) pickups and deliveries to points throughout the proposed territory, (5) records for prompt tracing of packages, (6) cargo liability up to $100 a package at no extra charge, (7) three delivery attempts without additional charge, (8) refused or otherwise undeliverable packages returned to consignor automatically with no extra charge, (9) payment of c.o.d. money by consignees' checks made payable to shippers, (10) pickup of previously delivered packages for return to shipper, (11) effort made to obtain a correct address for package incorrectly addressed, (12) uniformed drivers, (13) handling of fragile merchandise with a minimum of packing, and (14) providing the aforementioned service at rate competitive with those for uninsured parcel post. Applicant's present service in the territory involved herein, within the scope of operating rights presently held, includes these features.

The wholesale service which applicant and its affiliates, United Parcel Service of Detroit, Inc., and United Parcel Service, Inc. (the Indiana corporation), have rendered in common carriage in the proposed destination territory has increased in volume from 371,674 packages transported in 1953 to 24,280,764 packages handled in 1959. The number of shippers receiving a daily pickup call in this operation at the end of the year likewise has increased from 280 in 1953 to 13,841 in 1959. Nationally the United Parcel Service companies volume in the same type of operation increased from 5,921,228 packages in 1951 to 63,008,677 packages in 1959. The number of shippers receiving a daily pickup call at the end of the year increased from 2,113 in 1952 to 31,569 in 1959. The average number of pounds per package in 1959 was 9.4.

Applicant made a study for the week ended February 6, 1960, of the shippers who have a daily pickup call in the States or portions of States named in the application to determine those who have an average volume of less than five packages a day. The number of shippers receiving a daily pickup call were as follows: Illinois 6,431, Indiana 1,373, Ohio 2,549, Michigan 2,322, Wisconsin 982, and Missouri 419. Of these, 66.1 percent in Illinois, 74.6 percent in Indiana, 67.2 percent in Ohio, 70.3 percent in Michigan, 73.8 percent in Wisconsin, and 73.0 percent in Missouri shipped an average of less than five packages a day. Of the same shippers 52.2 percent in Illinois, 67.8 percent in Indiana, 51.8 percent in Ohio, 57 percent in Michigan, 58.3 percent in Wisconsin, and 62.9 percent in Missouri did not have any packages for delivery on 1 or more days during the week.

A comparison of the proposed operation with that of parcel post shows that the former has many service advantages over the latter. In this connection, (1) applicant affords daily pickup service whereas users of parcel post service must bring their packages to the post office, (2) applicant holds out to render a fast service of not later than second-day deliveries whereas parcel post holds out no assured time of delivery, (3) applicant obtains signed receipts for packages whereas such service is available from parcel post only if a special form is executed and an additional payment is made therefor, (4) in view of (3) above, applicant is in a position to respond readily to tracing requests whereas it is impossible for parcel post to trace unreceipted packages, (5) applicant automatically provides insurance coverage up to $100 per shipment for loss and damage, with added coverage available if requested,

whereas insurance is not provided by parcel post unless certain forms are filled out and fees paid therefor, (6) applicant will make three attempts to effect delivery of a package whereas parcel post makes one such attempt, after which the package is held at the post office awaiting additional instructions, (7) applicant returns refused or rejected shipments without additional charges whereas parcel post returns such shipments for an added charge, (8) applicant will accept either checks or cash in payment for a c.o.d. shipment whereas parcel post requires purchase of a money order for remittance to consignor, (9) applicant will, at the request of the consignor, return previously delivered packages whereas to obtain this service by parcel post consignee must take packages to the post office for return, (10) applicant makes a prompt settlement for parcels lost or damaged whereas parcel post makes settlement only on insured packages and only after the filing of a special form, (11) applicant operates under a rate structure which makes its charges much easier to compute than parcel post charges, and (12) applicant's service involves less rigid packing of shipments than parcel post because the latter uses the "throw sort" system whereas applicant uses the more modern sorting facilities hereinbefore described.

Except for deliveries from one first-class post office to another first-class post office, the weight limits on a parcel post package is 70 pounds and the size limit is 100 inches in length and girth combined. On a package shipped from one first-class post office to another such post office the weight limit is 40 pounds, if the delivery is made within postal zones 1 or 2, and 20 pounds made beyond zones 1 and 2, and the size limit is 72 inches in length and girth. An exhibit prepared by applicant lists 8,989 points shown in Rand McNally's Commercial Atlas and Marketing Guide, 1960 edition, in the territory involved in this application and the class of post office located at each of these points. It shows 985 having a first-class post office, 1,075 having a second-class post office, 1,700 having a third-class post office, 885 having a fourth-class post office, and 4,344 have no post office.

To show that Railway Express Agency, Inc.,[4] does not provide a service from and to all points in the considered destination territory, such as that proposed herein, applicant, from its delivery receipts, prepared maps with markings showing the destination points served by it under existing interstate and intrastate authority during the week of February 20, 1960, in each of the States or portions of States embraced in the proposed territory. From reference to appropriate REA publications it also designated on these maps whether each of these points had REA service available thereto, or had an office located thereat but no delivery service, or had both pickup and delivery service available. The points covered by this study included 1,212 in Illinois, 4 in Iowa, 761 in Indiana, 952 in Ohio, 480 in Michigan, 328 in Wisconsin, and 202 in Missouri, and were distributed throughout the States or portions of States involved. From the total of 3,939 points covered throughout the proposed territory 46 percent had no REA service available thereat, 24 percent had an REA office but no pickup and delivery service, and 30 percent had REA pickup and delivery service.

Applicant also takes the position that it performs a type of service which will not result in any appreciable diversion of traffic from REA. It adduced evidence to substantiate this from analyses made of shipping records supporting REA exhibits in other proceedings in which that carrier opposed it. In this connection, in a proceeding before the Ohio Public Utilities Commission evidence introduced by applicant, obtained from records used to support an exhibit of REA,[5]

[4] Hereinafter for convenience referred to as REA.
[5] Involving a sample of shipments transported in March 1959.

showed that of 486 shipments handled by REA from Cleveland, 279 shipments from Cincinnati, and 211 shipments from Toledo, all destined to points in Ohio, 79.4 percent of those from Cleveland, 85.7 percent of those from Cincinnati, and 78.2 percent of those from Toledo were within the 1 to 50 pound weight bracket. At that time, applicant held authority and was transporting shipments within that weight bracket from the three named origins only to points in Ohio. Nevertheless evidence with respect to 637 shipments transported by REA from Columbus, and origin point not served by applicant, and 2,957 shipments from all other origins in Ohio not served by applicant, all to destinations in Ohio, disclosed that 79.4 percent of those from Columbus and 80.5 percent of those from the other origins not served by applicant were within the 1 to 50 pound weight bracket. Similarly, an analysis of shipping records supporting a REA exhibit in a proceeding before the New York Public Service Commission showed that from a sample of 2,169 shipments transported by REA between points in New York State other than those originating at and terminating in the New York, N.Y., commercial zone in September 1959, 71.6 percent were shipments in the 1 to 50 pound weight bracket. Applicant did not render any service between these points. However, with respect to the 104 shipments in the same sample which originated at and terminated in the New York commercial zone, 82.7 percent were within the 1 to 50 pound weight bracket. Applicant at that time did transport shipments within that weight bracket within this commercial zone. In view of the foregoing, applicant's vice president asserts that REA's transportation of as high as percentage of shipments in the 1 to 50 pounds bracket from and to points where applicant renders service on this traffic as from and to points where it does not render such service, indicates that applicant's parcel delivery service is not appreciably competitive with that of REA.

Evidence in support of the application was adduced by 193 public witnesses representing both large and small manufacturers and wholesale business establishments. The presentation of further evidence of this nature was terminated by a ruling of the examiner, in conformity with rule 1.76 of the Commission's Rules of Practice, that further evidence of this character would be cumulative. Some of the public witnesses represented concerns which individually ship packages from a number of origin points. The supporting companies shipped from the following number of origin points within the territory described in the application: 60 in Illinois, 35 in Indiana, 3 in Iowa, 20 in Michigan, 8 in Missouri, 55 in Ohio, and 17 in Wisconsin. About 75 percent of such points were origins for traffic moving to all points in the proposed territory, and the remainder were origins for traffic moving to points in portions thereof. Of the supporting public witnesses, all, except 36, represented companies which were shipping by applicant, principally in intrastate commerce, within the scope of its present authority. Nearly all of the 36 remaining concerns were receivers of freight transported by it, but did not use applicant for outbound shipments because of limitations in the scope of its present authority.

All of the supporting shippers* now use parcel post to transport packages from their places of business to points in the considered territory. Dissatisfaction was expressed with the service provided by parcel post for a number of reasons. In this connection, after some evidence had been adduced with respect thereto, it was stipulated between applicant and protestants that the use of parcel post resulted in shippers' experiencing the following difficulties: (1) it is necessary to take or send the package to be transported to the post office, (2) no signature for the receipt of such package is obtained unless it is insured, (3) tracing is-

*The term "shippers" as used herein also includes receivers where applicable.

impossible on an uninsured package and is slow with respect to an insured package, (4) only one attempt at delivery is made, (5) there is no call-return service, (6) claims are not honored unless the package is insured, and (7) a check is not accepted in payment of a c.o.d. charge, but instead, the consignee must purchase a money order. Other complaints, with respect to movement by parcel post were voiced by the supporting shipper witnesses at the hearing. Principally they were to the effect that insurance on packages must be secured at additional cost and inconvenience; that parcel post size and weight restrictions often require splitting of shipments into more than one package; that some loss or damage to packages is experienced; and that delivery of packages sometimes is slow and unpredictable. The shippers who had used applicant within the scope of its present authority expressed complete satisfaction with the service afforded, and all of the supporting companies asserted that applicant's service would be used to handle shipments now transported by parcel post if the application is granted. A few concerns also indicated that they would use applicant to supplant existing private motor carriage. About 50 percent of the supporting companies adduced evidence, with respect to the weight of the shipments made by parcel post. The majority of these concerns do not use it for shipments weighing more than 50 pounds. Nearly all of the remainder do not use it for shipments weighing more than 70 pounds. In some instances, shipments weighing more than parcel post limits have been split into more than one package and shipped separately to comply with such limits.

In addition to parcel post, most of the supporting shippers also use the service of existing motor carriers. Because of the minimum rates published by such carriers, these companies, with few exceptions, utilize this service only for shipments weighing over 50 pounds. Many do not forward shipments in motor carriage weighing less than 100 pounds. About 60 percent of the supporting companies ship by REA on more than an occasional basis. About 40 percent do not use such service or use it only occasionally, many of the latter only at the request of customers. About 50 of the shippers using REA indicated the weight of shipments forwarded by that medium. Of these, about 44 percent used express service for shipments weighing 50 pounds or more and 56 percent for shipments which include those weighing less than 50 pounds. About 75 percent of the shippers in the latter category used REA for transportation of shipments weighing 25 pounds or more. About 11 shippers used REA for transportation of shipments of explosives, narcotics perishables, poisons, and valuable articles, and 15 used such service for the transportation of packages which exceeded parcel post size limits. About 40 indicated that REA did not serve all destination points to which their shipments moved, and 7 asserted that any shipments transported by REA would have to be taken to its nearest office because that carrier did not have pickup service at the points where their business establishments were located. About 28 were not satisfied with the amount of time required for delivery of express shipments and 20 with the length of time required by REA to trace shipments. At least 8 asserted that they did not use express service because it was too costly for the movement of low-weight packages.

PROTESTANTS' EVIDENCE

REA is a nationwide transporter of small shipments utilizing truck, rail, water carrier, and air service for this purpose. It also serves 42 foreign countries directly and about 180 other countries indirectly in an international service. Its gross revenue in 1959 amounted to $460 million, of which its carload revenue was only $8 million. The carrier's principal business is the handling of less-

than-carload express shipments, of which during 1959 it transported about 64 million. In addition, it handled about 6 million air express shipments. Since 1929 REA has operated under the ownership of railroads in this country. REA experiences competition in the handling of less-than-carload express shipments from parcel post, motor freight carriers, buslines, airfreight carriers, freight forwarders, and applicant. Since 1946, because of inflation resulting in higher labor costs and competition, REA has experienced large deficits in its operations, particularly during the period from 1955 through 1959. This has resulted in a change in management and a process of reorganization, commencing during the latter part of 1959, with a view toward giving it the status of an independent enterprise in lieu of its former status as an agent or instrumentality of its railroad owners. In this connection, under the reorganization REA will have freedom to route its traffic, to price its service, and to earn a net income, but will be required to be self-supporting. The new agreement with the railroads under which its service will be performed is discussed in *Express Contract, 1959*, 308 I.C.C. 545. Since the reorganization began, REA has undertaken to increase its truck routes for shorter hauls, purchase more motor carrier equipment, and improve its terminal facilities. Eleven million dollars have been expended for this purpose. Other improvements and economies have been undertaken or are contemplated. During 1959 REA experienced a deficit of about $14,500,000 in its operations and it still has serious problems to face in its efforts to place its express operations on a self-sustaining basis.

REA has 32,456 salaried employees, of which 9,531 are located in Illinois, Indiana, Iowa, Michigan, Missouri, Ohio, and Wisconsin. In addition, it has 9,537 commission agents, of which 2,422 are located in the aforementioned 7 States. The rents paid and taxes paid by REA in this seven-State area cover 33 percent and 27 percent, respectively, of the total expenditures made by it for these purposes. The carrier owns and operates 3,009 vehicles, including trucks, tractors, and trailers in the territory covered by the instant application, and has 410 new units scheduled for delivery. Its investment in motor vehicle equipment in this area, after depreciation, amounts to $5,204,848. REA uses various types and sizes of motor vehicles adapted to the kind of transportation which it performs. It uses conveyor sorting devices at its terminal at Long Island City, N.Y., and has on order similar but improved sorting equipment for terminals at Chicago and St. Louis. The carrier has vehicle replacement and terminal improvement programs now in effect. It is closing some of its offices and concentrating the receipt and distribution of traffic formerly handled at such offices at a more limited number of points, called key points. Generally speaking, new facilities are constructed at such key points and in some instances pickup and delivery is extended to points which formerly did not enjoy such service. While the concentration of functions at key points is a relatively new development, REA admittedly has been closing offices and in some, but not all instances, shifting the functions formerly performed at the closed offices to others. REA for intercity movement of traffic principally uses space on rail passenger trains, and recently some use has been made of rail piggyback service. Short-haul traffic is being handled predominantly in over-the-road truck service. REA, in connection with its nationwide and international service, provides various special service features, principally as follows: (1) a fleet of refrigerator cars for the movement of perishables, (2) facilities for carrying livestock including racehorses, (3) hampers within which small packages can be consolidated for delivery to a distribution point, (4) local parcel delivery service in most States, (5) line-haul charges including pickup and delivery within specified pickup and

delivery limits, (6) all forms of baggage delivery and transfer for passengers, (7) special handling of valuables, (8) stopping of shipment in transit and reconsignment, (9) no restrictions as to size, weight, or class of shipment which it will handle, (10) movement of convention display and similar sets from town to town, including erection and dismantling thereof, (11) shipping of express collect, c.o.d., and partially collect, (12) lot shipments of more than one package charged for as one shipment, (13) acceptance of c.o.d. shipment or shipments delivered on trial, (14) receipts to both shipper and receiver when desired; (15) collection and disbursement of money for customers, (16) purchases for customers, and (17) sales for customers. REA uses rail and air service principally in line-haul operations, and both facilities are coordinated so that joint use may be made thereof.

REA introduced in evidence an exhibit listing all pieces or packages loaded on July 19, 1960, for line-haul movements from Detroit to Cleveland and Chicago, from Chicago to Columbus, Cleveland, Indianapolis, and St. Louis, from Cincinnati to St. Louis and Cleveland, from St. Louis to Chicago and Cincinnati, from Cleveland to St. Louis and Chicago, and from Columbus to Chicago. These pieces included those originating within the pickup limits of the origin cities and those destined within the delivery limits of the destination cities. The exhibit was prepared from counts made by protestant's employees at the points referred to therein. The exhibit disclosed that of 1,159 pieces loaded on July 19, 1960, at the origins shown, 985 were unloaded and placed on vehicles for delivery on July 20, 1960. An additional 17 pieces moving from Chicago to St. Louis were loaded on such vehicles on July 21, 1960, leaving only 27 pieces which were not placed on delivery vehicles by the second day. A large number of pieces which were loaded on and off of the cars or trailers performing the line-haul movements from and to the aforementioned points had ultimate origin or destination at points beyond the collection or delivery areas of the considered points and, therefore, were excluded from the study.

Using 51,325 IBM cards covering parcel post packages moving in interstate commerce within the territory involved herein made by applicant's present customers as shown in the 1-day survey, previously referred to herein, REA prepared an exhibit showing the percentage of packages which originated at points where REA affords pickup service and the percentage moving to points where it affords delivery service. This evidence reveals that 98.6 percent of the packages shown in the survey originated at points where REA has pickup service. Seventy-two percent of the packages originated at cities of over 100,000 population, all of which have pickup service by this protestant. REA also provides delivery service at destinations for 91 percent of the packages covered by the survey. Sixty percent of the packages were destined to cities with populations of 25,000 or more, all of which have delivery service by REA. Admittedly REA's study did not take into consideration the fact that some parcel post packages which originated at or were destined to post offices may have had an ultimate origin or destination outside of the communities in which such post offices were located. REA has pickup and delivery service at 1,277 points in the considered territory and offices but no pickup and delivery service at 1,051 additional points therein.

An exhibit introduced in evidence by applicant, previously referred to herein, listed the number and percentage of points at which applicant made deliveries during the week of February 20, 1960, to which REA either had no service, an office but no pickup and delivery service, and both pickup and delivery service. REA also introduced in evidence an exhibit showing that the points involved

in this 1-week study have a total population of 25,429,355; that 3.6 percent of the persons comprising this population had no REA service available; that 3.3 percent of such persons had an REA office located in their communities but no delivery service available; and that 93.1 percent of such persons had both pickup and delivery service available. In the preparation of the exhibit, REA was credited with having pickup and delivery service at all cities where it affords pickup and delivery service and consideration was not given to the fact that at some points its pickup and delivery service extends to an area which is less than the corporate limits of such cities.

REA in a test check of 285 points located throughout the territory described in the application herein at which it has telephone listings found that applicant only has telephone listings at 21.8 percent of these points, and that REA also has listings in the classified (yellow) telephone directories at 62.8 percent, and applicant has such listings at 10.2 percent, of these points. REA has between 1,600 and 1,800 offices located in the considered territory, of which about 600 are offices with salaried employees. The others are mainly joint offices with railroads. REA maintains telephone listings at all of its salaried offices and at some of its other offices.

An exhibit presented by REA showing a comparison of REA's charges and applicant's proposed charges discloses that, for example, on shipments weighing 10 pounds moving from Jefferson City, Mo., to St. Louis, Mo., a distance of 130 miles, REA's first-class charge is 420 percent of applicant's charge; from the same origin to Indianapolis, Ind., a distance of 370 miles its first-class charge is 337 percent of applicant's charge; and from that origin to Ashtabula, Ohio, a distance of 625 miles, its charge is 370 percent of applicant's charge. On shipments of 10 pounds moving under illustrative REA incentive rates applicable on shipments aggregating 1,500 pounds or more, limited to certain designated commodities, furnished by a shipper at Jefferson City on 1 day, and which may move to a number of destinations, REA's charge to St. Louis is 264 percent, to Indianapolis is 209 percent, and to Ashtabula is 228 percent of applicant's charge. On shipments weighing 35 pounds from Jefferson City, REA's first-class charge to St. Louis is 208 percent, to Indianapolis is 166 percent, and to Ashtabula is 205 percent, of applicant's charge. On shipments of the same weight moving under incentive rates, aggregating 1,500 pounds or more, REA's charge to St. Louis is 125 percent, to Indianapolis is 100 percent, and to Ashtabula is 122 percent, of applicant's charge. On shipments weighing 50 pounds, REA's first-class charge from the same origin to St. Louis is 173 percent, to Indianapolis is 145 percent, and to Ashtabula is 181 percent, of applicant's charge. On shipments of the same weight moving under incentive rates, aggregating 1,500 pounds or more, REA's charge to St. Louis is 104 percent, to Indianapolis is 85 percent, and to Ashtabula is 107 percent, of applicant's charge. On shipments weighing 100 pounds,[7] REA's first-class charge from Jefferson City to St. Louis is 124 percent, to Indianapolis is 116 percent, and to Ashtabula is 148 percent, of applicant's charge. On shipments of the same weight moving under incentive rates, aggregating 1,500 pounds or more, REA's charge to St. Louis is 73 percent, to Indianapolis is 67 percent, and to Ashtabula is 86 percent, of applicant's charge. REA's incentive rates are applicable to only certain designated commodities and on some of these commodities are available only from certain designated shipping points. On shipments moving under REA's first-class charges in eastern

[7] Invciving two packages, each weighing 50 pounds and considered as separate shipments, both from the same shipper to the same receiver, when handled by applicant.

territory, the minimum charge on certain commodities is $2.36 and on other commodities is $2.57. On shipments in the considered area on which eastern territory charges are not appreciable, the minimum charge is $2.36. There has been a continuous increase in these minimum charges since April 15, 1959, to the extent that the present minimum charges are about 10 times as large as they were in 1939. The same exhibit also shows that on shipments of 10, 35, 50 and 100 pounds from Jefferson City to St. Louis, Indianapolis, and Ashtabula, applicant's charges are lower than those of parcel post.

Traffic handled by REA which is not attractive from a revenue standpoint includes such items as lamps and lampshades, convention exhibits, millinery, men's hats, holly handbags, X-ray tubes, incandescent lamps, electronic tubes, live creatures, cut flowers, plants, bakery goods, fish and seafood, explosives, poisons, acids, and baggage. This type of freight covers about 25 percent of that handled by REA. However, on cross-examination carrier's assistant general traffic manager admitted that much of the traffic in this category also is transported in substantial volume by REA's competitors or in private carriage, and that REA considers it to be desirable traffic.

REA's shipments weighing 25 pounds or less during the 12-month period beginning February 1, 1958, amounted in number to 28,550,830 or 43.9 percent of its total shipments; those weighing 50 pounds or less to 50,450,400 or 77.57 percent of such total; and those weighing 100 pounds or less to 59,977,255 or 92.22 percent thereof. REA's shipments include those which consist of more than one piece or package. Twenty-six percent of its shipments are transported from 1 to 250 miles, 20.15 percent are moved from 251 to 500 miles, and 13.7 percent are handled from 501 to 750 miles. REA's rates admittedly during the period from 1940 to date have increased about 155 percent.

A research analyst employed by REA, who has been engaged for 4 years in making sampling surveys on its behalf, prepared a letter of instructions, accompanied by appropriate forms, which letter was signed and sent by his superior, outlining to field employees the procedure to be followed in a sampling survey of the proportion of REA's traffic which is vulnerable to diversion to applicant if the application herein is granted. Counts were made by employees of REA on specified dates pursuant to instruction to count pieces weighing not more than 50 pounds and not exceeding 108 inches in length and girth combined, moving from and to points in the considered territory, excluding intrastate shipments and those embraced in the exceptions and restrictions in the application. This work was done at 45 points and varied from a count of every 15th piece or 8th piece* at the larger cities to every piece or every other piece at the smaller points. Based upon the returns to these counts, the witness expressed the opinion that REA transported approximately 280,000 pieces a month subject to such diversion. The witness making this estimate erroneously omitted pieces moving from the Chicago commercial zone, and based upon a monthly report of REA showing the total number of pieces originating at points in the Chicago commercial zone he estimated that about 60,000 pieces a month moved in interstate commerce from such zone to points in the proposed territory beyond the scope of applicant's present interstate authority. His original estimate accordingly was revised to include these additional pieces.

An assistant vice president-traffic of REA made an estimate on behalf of this protestant as to the percentage of the 340,000 pieces per month estimated to be exposed to diversion if this application is granted. This witness has been em-

* Includes an individual package which is part of a shipment comprising more than one package.

111537—63——3

ployed by railroads and shippers during the past 44 years. He served, among other capacities, as general traffic director of the Fisher Body Corporation and was a member and later chairman of both the Standing Rate Committee of the General Motors Traffic Association and the Executive Committee of General Motors Traffic Association. He terminated his employment by retirement with the General Motors interests on November 1, 1959, and commenced employment with REA on February 1, 1960, about 6 months prior to the date of the hearing on July 28, 1960. During the period of his employment, he contacted shippers, mainly those connected in one way or another with the automotive industry, in an effort to retain and attract traffic to REA. Based upon his experience both before and after employment by REA, he estimated that this protestant would lose about 85 percent of the 340,000 pieces per month estimated to be exposed to diversion, if the instant application is granted. It was his opinion that the minimum loss experienced would be at least 65 percent, and the maximum 100 percent, of this traffic. On cross-examination it was developed that the opinion of the witness was not based upon any special studies and that he was not familiar with the size limits of parcel post, the percentage of REA pieces embraced in the aforementioned 340,000 pieces which were included in multiple-piece shipments, and the percentage of such traffic moving at rates higher than parcel post rates or higher than truck rates. He also indicated that he had not made any special studies to determine the difference in traffic volume which might have been experienced by REA with respect to shipments weighing 50 pounds and under moving in interstate commerce from Chicago to points in part of the considered territory or in intrastate commerce in Ohio, Illinois, Indiana, and Michigan before and after applicant obtained authority to perform such service.

REA's president also expressed the opinion that if the instant application is granted protestant will lose about 2 million shipments a year to applicant, resulting in an annual net loss of about $5 million. In making this estimate the witness admittedly did not know the volume of traffic transported by his company in either intrastate or interstate commerce in any part the proposed territory before or after applicant began its operations therein under appropriate operating authorities. He asserts that too great a dilution of the available traffic among the different carriers is one of the major causes of the so-called small shipments problem; that the further entry of applicant into the field to the extent proposed in the application will further aggravate this problem; and that REA needs the lucrative small shipments traffic to enable it also to handle the more burdensome or less desirable traffic in this field.

REA filed an application in No. MC-66562 (Sub-No. 1671) on May 2, 1960, seeking authority as a common carrier by motor vehicle of general commodities moving in express service, between points in the territory involved in the instant proceeding. At the same time it filed a petition for consolidation of this proceeding with that here considered for hearing and decision. This application and petition were filed only 7 days prior to the commencement of the hearing in the instant proceeding, which was too late for the filing of replies and processing thereof prior to such hearing, and protestant was so notified by letter. On November 1, 1960, the petition for consolidation was denied "for the reason that no good cause appears for consolidation at this time."

REA's president asserts that its application was filed because the instant application was filed and that its position is that if a package delivery service over irregular routes throughout the aforementioned territory is to be provided, it should be afforded by a carrier which is already in the field and which will transport the traffic on an all-inclusive rather than a pick and choose basis. He

also claims that applicant, in excepting certain commodities from its application has excluded unprofitable traffic; that it has made its operation more economical from a freight handling standpoint by imposing weight and size limitations; and that by the imposition of a weekly pickup charge has made its service available only to regular shippers. He asserts that the filing of REA's application was a defensive measure, and that he would not want to have it institute the operation proposed therein now if the application filed by applicant herein was denied. However, he believes that if the authority sought by REA in the aforementioned application is granted, it could render a more economical and expeditious service than it now provides in the considered territory.

REA admittedly is offering so-called incentive rates for larger volumes of the more attractive traffic such as wearing apparel and automobile parts. About 8 percent of its volume moves under such rates. It is anticipated that such rates will raise the average weight of shipments of wearing apparel transported from about 38 pounds to 58 pounds. At the present time REA is endeavoring to obtain more shipments weighing around 100 and 125 pounds now handled by its competitors. REA's present average weight per shipment is 48 pounds and its average weight per piece is 26 pounds.

The soundness of the cost estimates made by applicant's vice president was challenged by the assistant comptroller of REA. In this connection, attention was directed to the fact that during the period from 1955 to 1959 the number of packages handled by applicant and its affiliates in the involved territory increased from 4,535,988 to 24,280,764 per year, an increase of about 435 percent. During the same period, REA's witness, from information furnished in applicant's evidence, computed the number of packages per pickup stop received by applicant and found that such packages declined from 10.48 to 7.79 per stop, or about 26 percent. In the circumstances, REA's witness asserts that the estimated decrease in pickup expense from 8.3 cents per stop to 6.2 cents per stop, as a result of an increase in the number of pickups per stop anticipated by applicant, is contrary to the trend shown in its past operations. REA's assistant comptroller, from similar information, also made computations which indicated that the number of packages transported by applicant during the last 6 months of 1959 increased 15 percent over the number handled during the preceding 6 months, and that the delivery expense for the same period increased 9½ percent over that for the first 6 months of that year. Accordingly, he likewise asserts that reduction in the average delivery expense per package anticipated by applicant from the present 34.5 cents to 30.7 cents in the proposed operation is not in accord with the trend in past operations.

An investigation was made by REA with respect to the service made available by applicant or its affiliate in present operations from Chicago, New York City, and Boston, Mass., to individuals, as distinguished from business establishments, shipping a single package or several packages a week from their residences in interstate commerce. For convenience, with reference to this investigation, both applicant and its affiliate will be referred to as applicant. It subsequently was broadened to test the observance by applicant of the 50-pound weight limitation in its authorities. In connection with the investigation about 24 calls were made to applicant's offices by special agents of REA representing themselves as individual shippers. The reports of the agents submitted in evidence show also that a few shipments were made on behalf of REA agents by business firms, but apparently these were the result of a misunderstanding on the part of these agents and, therefore, such shipments need not be further considered. Of the 24 calls, 8 were merely for the purpose of requesting information from appli-

cant's employees. With regard to six of these, the agents' reports indicate an unwillingness to pick up one or several shipments from the residences of individuals. In several instances the agents were advised that it would be cheaper to ship individual packages by REA, and in one it was suggested that the package be brought to applicant's terminal to avoid the weekly service charge. As to the two other information calls, applicant's employees showed a willingness to accept single shipments if the shipper would pay the carrier's weekly service charge, but suggested that the packages be brought to its terminal in order to eliminate this expense. The 16 remaining calls for service relate to requests for handling specific shipments, a total of about 34. Of these, about 30 were transported by applicant or applicant's employees indicated a willingness to accept them if tendered. The handling of the shipments in all instances was made contingent upon the payment by the shippers of applicant's weekly service charge. Five of the shipments transported weighing 52, 53, 53, 54, and 53 pounds, respectively, were accepted by applicant's drivers. On one shipment of 52 pounds and another of 53 pounds, the shipments were accepted after the driver advised the shipper of applicant's 50-pound weight limitation, and at his suggestion the pickup sheets were changed to show the weights of the packages as 50 pounds. In one of these instances, the driver was advised that the shipper was not certain of the accuracy of his scale and that 53 pounds was in the nature of an estimated weight. The four shipments which were refused by applicant included two which were offered individually, and the shipper was advised that applicant would not handle the shipments on "an individual basis" but would handle them on "a weekly basis." The remaining two shipments weighed 53 and 54 pounds, were tendered at applicant's office, and acceptance, because of overweight, was refused.

A stenographer employed by REA at Green Bay, Wis., found through a customer, that applicant could not be contacted at a point closer than Milwaukee, Wis. His letter request for service to Beloit, Wis., as an individual shipper was not sent to the proper address and was unanswered. Applicant's intrastate certificate is restricted in such a manner as to preclude the handling of shipments for private individuals. In addition, REA's agent at Saginaw, Mich., learned from applicant's Lansing office that applicant's places of business at Detroit and Lansing were the only offices where calls could be made for service in Michigan. The agent sent two letters requesting service from applicant using the name and address of another employee who was not present at the hearing for cross-examination. A salesman employed by REA at Detroit in a conversation with an employee of applicant in "Customer service," was advised that applicant would make a pickup at a private home if it had to but did not want that type of traffic. He also was advised that REA was a carrier which was engaged in handling this kind of traffic; that a customer shipping from a private home would have to pay $2 a week for a daily pickup; and that if the customer brought his package to applicant's office a pickup fee was not required.

The wife of one of REA's agent owns a retail dress shop, called the Angola Dress *Shop*, at Angola, Ind. At the request of her husband she asked a driver for applicant to transport a coat to an individual at New Harmony, Ind. The coat did not involve a sale by her store and the shipment was made only for a testing purpose. The driver asked her "are the things that you are going to ship out going to be wholesale?" She replied in the affirmative. The driver consented to take the shipment and she received a daily pickup call from applicant for 6 weeks for which she was assessed a $2 per week pickup charge. The bills sent to her for such charges were adressed to the Angola Dress

Company. According to the witness, this billing was made pursuant to a telephone call by an employee of applicant after she had given him the same information as she had previously given the driver. The employee advised her that because applicant only transported wholesale packages, she would have to call her business the Angola Dress *Company*.

Seventy-six shippers appeared on behalf of REA in opposition to the application. In addition, the evidence of three others was received by stipulation. Of these 79 companies, 8 are shippers of cut flowers and plants, and 1 is an association of growers and wholesalers of these commodities. The shipments made or received by such companies are highly perishable, require careful handling, and are forwarded so as to move on fast trains. Many exceed applicant's weight and size limitations. These concerns considered REA to be the only medium which can provide this type of transportation satisfactorily. Four other REA supporters are shippers of live animals and other commodities used for medical or other research purposes, and do not know of any carrier except REA which will transport live animals. Three concerns ship or receive fresh or frozen seafood and two others are distributors of human blood and plasma. These commodities require protection against heat or cold, a service which REA has afforded very successfully. For this reason, they would not use applicant's service, if authorized. On traffic requiring large volume movements in a short period of time, REA affords special assistance to insure proper delivery of the freight at the time required. For example, two of the opposing shippers are large distributors of printed advertising and other material to automobile dealers, one is the publisher of a large news magazine which must be distributed nationally within a very short time after publication, and another sells and rents caps and gowns on a nationwide basis principally to schools for graduation exercises. REA plans for these operations with the shippers and stations employees at their places of business to expedite the handling of the traffic. The representatives of these companies are not interested in applicant's proposal because of the specialized type of service which they now receive.

The remaining shipper supporters of REA generally are also satisfied with the service provided by that carrier. A number of the service features with which they find satisfaction in the use of REA are not characteristic of the service proposed by applicant. These include (1) the handling of shipments which exceed the weight or size limitations in applicant's proposal, (2) the forwarding or receipt of shipments on which freight charges are paid by consignee, (3) the providing of more than one pickup a day for as many as 7 days a week when requested, (4) the movement of high value freight in a security service wherein employees handling the shipments are required to sign therefor, (5) the availability of local REA offices at or near the points of origin and destination with which easy and frequent contacts can be made with reference to pickups, deliveries, tracing, claims, and shipping information, (6) the furnishing of an express receipt for each shipment tendered, which some of the companies find essential or desirable for their accounting procedures, (7) nationwide coverage, and (8) incentive rates based upon the total weight of freight furnished by a shipper on a particular day. Nearly all of the shippers appearing in opposition to the application refer to one or more of the aforementioned REA service features as the reason for their appearence herein. Other features of REA's service which they have found to be commendable include expedition and reliability in the handling of shipments of an urgent character, prompt tracing, and careful handling of traffic which is of a fragile nature. With a few exceptions hereinafter discussed, representatives of these companies indi-

cated that they oppose the granting of the application herein because of their apprehension that the granting thereof might result in a deterioration in the service provided by REA or by an increase in rates by that carrier as a result of the diversion of traffic to applicant. The witnesses were cognizant of the fact that REA had filed an application seeking authority as a common carrier by motor vehicle of general commodities moving in express service, between points in the proposed territory and, except as hereinafter indicated, expressed a preference for the granting of this application rather than that filed by applicant herein. Except as hereinafter noted, they asserted that they would not divert any traffic to applicant if the instant application was granted. A majority of the opposing companies are presently using parcel post in addition to REA. A few are using applicant's presently authorized service, principally in connection with small movements of inbound traffic.

Three of the companies offering evidence for REA made estimates of the volume of traffic which they anticipate would be diverted from REA to applicant if the instant application is granted. Four others evinced an interest in the use of applicant's service in such event, but did not indicate the extent, if any, to which there would be a diversion from REA, and all four are also users of parcel post. Representatives of 3 of the 7 companies expressed the view that there was a place for both applicant and REA in the transportation field.

Sloan's Moving and Storage Co., hereinafter referred to as Sloan's, of St. Louis, is engaged in household moving and storage business, general hauling, and parcel delivery service. In connection with the latter, it holds authority to operate as a common carrier of general commodities, with the usual exceptions, restricted to parcels not exceeding 100 pounds each, from St. Louis to points in St. Louis and St. Charles Counties, Mo., and points in that part of Illinois bounded on the west by the Mississippi River and on the east, north, and south by a line beginning at Chester, Ill., and extending along Illinois Highway 150 to its junction with Illinois Highway 154, thence along Illinois Highway 154 to Pinckneyville, Ill., thence along Illinois Highway 127 to Hillsboro, thence along Illinois Highway 16 to its junction with U. S. Highway 66, thence along U. S. Highway 66 to its junction with Illinois Highway 108, thence along Illinois Highway 108 to its junction with Illinois Highway 96, and thence along Illinois Highway 96 to the Mississippi River, including points on the indicated portions of the highways specified. Sloan's likewise holds authority to conduct a parcel delivery service in intrastate commerce in St. Louis, St. Charles, and Jefferson Counties, Mo. In No. MC-40861 (Sub-No. 4) *Sloan's Moving and Storage Co. Ext.—Illinois Points*, 84 M.C.C. 802 (not printed in full), decided March 14, 1961, it was granted authority to extend its service to the extent described in appendix C hereto. Sloan's has a terminal at St. Louis and owns and operates 55 Vanette-type trucks which are utilized in parcel delivery service. It employs 60 people in this operation. Packages picked up on one day are routed through its terminal and, except for unusual circumstances, are delivered on the following day. On mail orders or packages received at the terminal early in the morning same-day delivery is afforded. Uniformed drivers provide service to any point within the carrier's authorized territory. Sloan's employs seven salesmen and advertises its service over the radio and in the telephone directory and newspapers. Its parcel delivery service includes such features as obtaining signatures when desired for receipt of packages, cargo insurance on all packages, two automatic calls to effect deliveries, return of undeliverable packages to the shipper with no extra charge therefor, handling of c.o.d. shipments, return of refused, damaged, or rejected

shipments, and correction of wrong addresses on packages whenever possible. Sloan's rates are on about the same level as applicant's. About 99 percent of its shipments consist of single packages.

A survey of the number of parcels handled by Sloan's during the 10-day period from June 20 through July 1, 1960, disclosed that 25,878 were transported during that interval. About 25 percent of these were on behalf of wholesalers and 75 percent were on behalf of retailers. Of the 25,878 packages, 5,522 were transported in interstate commerce beyond the St. Louis commercial zone, of which 3,594 or 65 percent were for wholesalers and 1,928 or 35 percent were for retailers. The remainder of the shipments were either transported in intrastate commerce or within the St. Louis commercial zone. The 5,522 retail and wholesale deliveries were effected at 103 points in Missouri and Illinois beyond the St. Louis commercial zone. The interstate shipments moving to Missouri points were delivered to Sloan's at St. Louis by connecting carriers which obtained the traffic from out-of-State origins.

Another survey of packages handled by Sloan's in both its wholesale and retail parcel delivery service during the 5-day period October 19 through October, 23, 1959, reveals that 96.10 percent of the packages transported weighed 25 pounds or less; that 2.58 percent weighed between 26 and 50 pounds; and that 1.31 percent weighed between 51 and 100 pounds. The average weight per parcel handled by Sloan's is about 6¼ pounds. The carrier had operating revenue of $948,592 and enjoyed an operating ratio of 90.0 in 1959. About 50 percent of this revenue was obtained from its parcel delivery business.

Orschein Bros. Truck Lines, Inc., of Moberly, Mo., hereinafter called Orschein Bros., is a common carrier by motor vehicle of general commodities, with exceptions, over regular routes extending generally between St. Joseph, Mo., and Kansas City, Kans., on the west, and Chicago and Springfield, Ill., and St. Louis, on the east. It maintains 33 terminals, including those, so far as pertinent, at Chicago, Peoria, and Quincy, Ill., and Hannibal, Monroe City, Moberly, Columbia, Jefferson City, Mexico, Centralia, St. Louis, and Bowling Green, Mo. The carrier owns and operates 57 trucks, 142 tractors, and 232 trailers. A daily overnight service is afforded between points it is authorized to serve, except to certain off-route points served from Chicago. Orschein Bros. has minimum charges applicable to the handling of shipments weighing 100 pounds or less. Its rates admittedly are much higher than applicant's on shipments weighing from 1 to 50 pounds. The carrier's service includes pickup and delivery, routine stops at places of business of shippers who have daily shipments, signatures for the receipt of shipments, cargo insurance, more than one delivery attempt if necessary, return of undeliverable or refused packages at the request of the shipper, and handling of c.o.d. shipments. The carrier handles from 1,800 to 2,200 shipments a day. An exhibit presented by it listing shipments comprised of packages weighing 50 pounds or less for the 5-day period from May 2 through May 6, 1960, shows that only about 40 shipments in the exhibit, or an average of 8 per day, weighed less than 50 pounds. This exhibit does not include shipments originated by Orschein Bros. at St. Louis, from which about 50 percent of its interstate traffic originates. Shipments set forth in the exhibit weighing more than 50 pounds consisted of more than one package per shipment, and protestant's witness did not know whether some of the packages in these multiple-package shipments weighed more than 50 pounds or whether some were larger than the size limitations specified in the application. A large proportion of the shipments weighed several hundred pounds or more and many consisted of so many packages that applicant's charges thereon would be much higher than protestant's.

In the circumstances, the exhibit is not a reliable criterion as to the traffic subject to diversion on shipments other than those weighing 50 pounds or less. The carrier's gross volume in 1959 was $4,250,000 and its operation ratio for that year was 93.9.

Elfrink Truck Lines, Inc., hereinafter called Elfrink, of Advance, Mo., appeared in support of the protest filed by Tucker. Elfrink, so far as pertinent, holds authority to operate as a common carrier by motor vehicle, of general commodities, with the usual exceptions, over irregular routes, between Advance and Lutesville, Mo., and points within 30 miles of each, on the one hand, and, on the other, St. Louis, Mo., and East St. Louis, Ill. Its only interest herein is with respect to traffic which it transports between St. Louis and Cape Girardeau. It maintains terminals at St. Louis, Advance, and Cape Girardeau and operates 8 tractors, 11 trailers, and 2 pickup trucks. It offers overnight service between St. Louis and Cape Girardeau.

L. A. Tucker Truck Lines, Incorporated, hereinafter called Tucker, operates as a common carrier by motor vehicle, of general commodities, with exceptions, over regular routes extending generally between St. Louis and Memphis, Tenn., and Evansville, Ind. Its primary interest in opposing this application is with respect to its authority to transport general commodities, with the usual exceptions, over two routes, (1) between St. Louis and Perryville, Mo., and (2) between East St. Louis, Ill., and Cape Girardeau, Mo., serving specified intermediate points including St. Louis, Jackson, and St. Genevieve, Mo. The carrier maintains terminals, so far as pertinent, at St. Louis, St. Genevieve, Perryville, and Cape Girardeau and an agency station at Jackson. It operates 39 trucks, 51 tractors, and 93 semitrailers. Its headquarters are at Cape Girardeau, at which point it has a maintenance garage. Tucker interchanges with numerous motor carriers at St. Louis. The freight which it transports is primarily of a less-than-truckload character, and interchange traffic constitutes "the backbone" of its business. It has no restrictions as to the size or weight of packages it will handle. It publishes minimum rates such, for example, as an interstate rate of $2.40 from St. Louis to Cape Girardeau. The minimum charges generally are applicable to shipments weighing less than 100 or 125 pounds. Overnight service is offered on less-than-truckload shipments from St. Louis to points served by the carrier. An exhibit listing shipments comprised of packages weighing 50 pounds or less transported on 2 days, March 14 and March 28, 1960, covers 68 shipments. Of these, 39 weighed 100 pounds or less, had a total weight of 2,219 pounds, and produced $62.25 in revenue. The shipments listed which weighed more than 50 pounds consisted of more than one package. Tucker's witness admitted that whenever a shipment weighing over 100 pounds consists of multiple packages, use of applicant's service from a rate standpoint would be prohibitive. During 1959 the carrier's operating revenue amounted to $1,000,000.

APPLICANT'S REBUTTAL

In rebuttal, applicant's vice president points out that the increase in the number of packages transported in common carrier service in the considered territory during the 1955–59 period, referred to in the oral evidence of REA's comptroller, has been accompanied by continuous expansion of the area served. In this connection, service by applicant was first inaugurated in the involved territory in April 1953, commencing with movements in the Chicago area and was expanded at various intervals until in October 1956 it covered the State of Illinois in intrastate service. In April 1957, the operations were extended to cover service from Chicago to points in portions of Wisconsin, Illinois, Indiana, and

Michigan and Davenport, Clinton, and Dubuque, Iowa, as described in apendix B. Operations in intrastate commerce in Missouri were commenced in February 1958. Intrastate service in Indiana began in January 1959. The first operations within the Cincinnati commercial zone commenced in the fall of 1954 and those within the Cleveland commercial zone in March 1954. Subsequently these operations were extended from both origins to all points in Ohio, in intrastate commerce. This was effected in about October 1956. In January 1958, intrastate service was commenced from Toledo to all points in Ohio. Operations in intrastate commerce in Wisconsin were begun in October 1954 and extended in August 1955. Service in the Detroit commercial zone was instituted in the fall of 1955 and extended in intrastate commerce throughout the Michigan area involved herein in May 1958. In the opinion of the witness the extension in territories served during the 1955–59 period is a major factor in the increase in the number of packages shown during that period and also in the large increase in the number of shippers served. The estimate of applicant's vice president of added volume of packages which would be received in the proposed operation was based upon packages which he anticipated would be obtained from shippers now using applicant's service under existing authorities, and no attempt was made to estimate the volume which would be received from new shippers not presently served.

Applicant uses paid advertisements in newspapers throughout the territory considered herein to inform the public of the character of the service which it provides. The advertising is directed to wholesalers and manufacturers, which normally would be regular users of its service. It also has a current mailing list of 53,000 names of business firms to whom circulars describing its service are sent. Its vice president estimates that 120,000 firms in the Midwest have received its circulars during the last 5 years. About 70 solicitors are employed in this area, and applicant's drivers secure many sales contacts through their deliveries to numerous consignees.

Applicant's vice president estimates that odd-shaped, odd-sized, fragile, and other similar shipments requiring special handling constitute about 20 percent of applicant's total volume of packages. Applicant's service commences and terminates upon a verbal request of the shipper, and no contract is entered into at or before service begins. Although applicant rarely receives requests for one-package pickups, specific instructions have been issued recently to prevent any misunderstanding by its employees as to its willingness to perform such service if called upon. However, in order to obtain such a pickup, it is necessary for the shipper to pay the $2 weekly service charge.

An exhibit listing all cities and communities in the area proposed to be served herein having populations shown in the Rand McNally Commercial Atlas and Marketing Guide, 1960 edition, hereinafter referred to as the Rand McNally Guide, and showing whether REA has service available and, if so, the character of such service, was introduced in evidence by applicant in rebuttal.

This evidence is set forth in the tabulation below:

State	With REA delivery	REA office but no delivery	No REA office or delivery	Total
Illinois	329	434	1,497	2,260
Indiana	173	224	1,442	1,839
Iowa	4	1		5
Michigan	177	54	633	864
Missouri	95	59	303	457
Ohio	359	198	2,319	2,876
Wisconsin	84	77	326	487
All States, total	1,292	1,046	6,681	8,939

Reference above to a State refers only to that portion included in the application unless the entire State is embraced within. Another exhibit submitted by applicant shows that during the period from April through August 1960 there were 7 closings of REA offices in Illinois, 12 in Indiana, 13 in Michigan, 3 in Missouri, 14 in Ohio, and 2 in Wisconsin, which required persons residing at the point where the closings were effected to travel to other points from 3 to 25 miles distant to receive packages transported by REA. The points involved had populations ranging from 75 to 1,981. Admittedly some changes in service effected by REA in these States during the same period also involved extensions of its pickup and delivery service. However, the changes in service by REA during this period in all of these States resulted in a net decrease of 6 points with delivery, a net decrease of 9 points with offices but no delivery, and a net increase of 15 points with no office and no delivery.

Applicant computes the total population of the territory involved herein from the Rand McNally Guide as 36,375,900. Using the same population source, it also computes the number of persons residing at points where REA has pickup and delivery service as 24,782,100 or 68.1 percent of the total population of the area. Excluding the populations of major large cities in the area, i.e., Chicago, Indianapolis, Cleveland, Cincinnati, Detroit, Milwaukee, and St. Louis, the population of the considered territory is 27,165,900, of which 57.3 percent reside at points having pickup and delivery service by REA. On cross-examination it was developed that the Rand McNally Guide uses 1960 estimates for the States and larger cities, but uses 1950 census figures with respect to the populations of small cities and communities. Of some 2,698 points to which parcel post shipments were delivered on behalf of shippers which also use applicant's service, as shown by the 1-day (November 5, 1959) survey, 1,077 have pickup and delivery service by REA available, 644 have an REA office located thereat with no pickup or delivery, and 977 do not have either pickup or delivery available or an REA office located there. The 193 shipper witnesses supporting the application herein ship packages by parcel post to 3,480 points in the proposed territory, of which 1,135 points have pickup and delivery service by REA, 901 have an REA office but no pickup or delivery service, and 1,444 have no REA office or pickup or delivery service. With respect to 616 origin points for shipments made by applicant from and to points in the proposed territory during the week ended February 6, 1960, 496 have pickup and delivery by REA, 73 have an REA office but no pickup or delivery, and 47 have no REA office and no pickup or delivery.

Applicant's vice president asserts that its size and weight limitations have been established to assure the general trucking industry that it has no intention of encroaching upon that field. In seeking operating authority, the placing of such restrictions in the request for authority has been instrumental in inducing many of such carriers to withdraw their opposition. No regulatory agency has ever brought any violations of these limitations to the attention of this witness, and the district managers and others, since the presentation of REA's evidence, have been warned to avoid any violations of this character.

Applicant commenced operating in intrastate commerce in Wisconsin in 1955. Annual reports filed with the Public Service Commission of that State show that REA's intrastate revenue declined from $759,767 in 1955 to $559,644 in 1959 or 73.7 percent of the 1955 amount and interstate revenue in connection with operations to or from points in that State declined from $4,753,137 in 1955 to $3,519,156 in 1959 or 74 percent of the 1955 amount. During the aforementioned period applicant was competitive with REA on intrastate traffic

but not on interstate traffic. In Ohio REA's intrastate revenue increased from $2,869,630 in 1955 to $3,350,973 in 1959 or 116.8 percent of the 1955 amount despite the fact that applicant's revenue on intrastate traffic from Cincinnati, Cleveland, and Toledo increased from $388,023 to $2,995,898 during the same period.

During the week ended February 6, 1960, 5,871 of applicant's shippers in Illinois gave it an average of less than 300 pounds of freight a day, 257 gave it an average of from 300 to 1,499 pounds of freight a day, and 17 shippers gave it an average of 1,500 pounds or over a day.

With respect to REA's estimate of shipments exposed to diversion by applicant if the application herein is granted applicant introduced in evidence an exhibit showing that between some points within the territory involved herein REA's first-class rates on shipments commencing with those weighing 30 or 40 pounds are higher than truck rates on such shipments. Similarly, another exhibit shows that on shipments weighing from 1 to 100 pounds in weight the rates of buslines on express traffic from Indianapolis to Chicago are lower than REA's rates. Applicant's vice president asserts that REA is handling shipments where its charges are less than parcel post's charges on some multiple package shipments weighing less than 50 pounds and on many more weighing more than 50 pounds, which shipments would ordinarily not be subject to diversion to applicant. Shipments now handled by REA which are obtained from companies who insist on sending their traffic with the freight charges collect, which includes a large amount of REA's traffic, or those who insist on an individual bill of lading or receipt for each shipment also are not subject to such diversion. Traffic now handled by REA of shippers whose traffic requires deliveries at specified times which conform to certain train schedules, of shippers who honor consignee's routings of traffic via REA, and of shippers who have small packages moving as part of oversize shipments, also is not generally subject to diversion to applicant. Traffic involving large movements which must be delivered at specified times, such as magazines and advertising programs for new cars, on which there have been close working arrangements between the shippers and REA for a long time, also is not subject to diversion.

An exhibit submitted by applicant in its application for intrastate authority in Ohio contains an analysis of REA transit time of 1,954 shipments moving from unspecified origins in that State to Cleveland, Cincinnati, Columbus, and other unnamed cities in Ohio. It shows that on 1.9 percent of such shipments delivery was effected on the same day, on 43.2 percent delivery was effected on the next day, on 36.7 percent delivery was effected on the second day, and on 18.2 percent delivery was effected subsequent to the second day. Applicant's employees sent 37 test shipments from Detroit to Cleveland and Chicago, from Chicago to Columbus, Cleveland, St. Louis, and Indianapolis, from St. Louis to Chicago and Cincinnati, from Cincinnati to St. Louis and Cleveland, from Cleveland to St. Louis and Chicago, and from Columbus to Chicago. Of these, deliveries were effected or attempted as follows: 2 on the next day, 24 on the second day, 4 on the third day, 6 on the fourth day, and 1 on the seventh day. These computations were made from the time of pickup to the time of delivery or attempted delivery. Saturdays and Sundays were excluded from the time computed.

Because of the extremely large record in this proceeding, only the evidence viewed as most pertinent and determinative of the issues here involved has been set forth above. Other evidence deemed of lesser significance has been considered but not specifically discussed.

DISCUSSION AND CONCLUSIONS

REA on brief at the outset takes the position that its petition for consolidation of its application in No. MC–66562 (Sub-No. 1071) with that here considered for hearing and decision should have been granted and that in the absence of such consolidation it is impossible for the examiner to make a valid recommendation with respect to the granting or denial of the application, citing *Ashbacker Radio Corp.* v. *Federal Communications Commission*, 326 U.S. 327. In that case the Federal Communications Commission granted an application filed by an applicant for authority to construct a new station at Grand Rapids, Mich., prior to the disposition of a pending application filed 2 months later by an existing operator at Muskegon, Mich., for authority to change the operating frequency of its station in such manner that the simultaneous operation of stations at both locations would result "in intolerable interference." The Supreme Court held that by statute Congress had granted applicants a right to a hearing on their applications for station licenses, and that where two bona fide applications are mutually exclusive the grant of one prior to the hearing of the other, in practical effect, deprives the latter of this right. REA refers to subsequent court cases relating to a reversal of decisions of administrative agencies[*] on the ground that such agencies failed to consider the comparative merits of mutually exclusive applications pending at the same time.

As hereinbefore indicated, REA filed its application in the aforementioned proceeding for motor common carrier authority to transport general commodities moving in express service, over irregular routes, between points in the same territory as is involved in the instant proceeding. This application was filed only 7 days prior to the commencement of the hearing in the instant proceeding and was accompanied by a petition for consolidation of the two cases for hearing and decision. The petition was denied by order of the Commission dated November 1, 1960, and a subsequent petition for reconsideration of this order and for hearing on the issue of the mutual exclusiveness of the two applications was denied on February 28, 1961.

REA's argument that the Commission erred in failing to consolidate its application with that in the instant proceeding rests solely upon its contention that the two applications are "mutually exclusive." As seen, while the territorial scope of the two applications is the same, the REA application contains none of the commodity restrictions or service restrictions included in applicant's proposal. The latter, in effect, limit the proposed operation to a specialized package delivery service, whereas REA's application practically seeks authority for a general commodity motor carrier service. The difference in the two proposals is most apparent inasmuch as only REA and three motor carriers now oppose the instant application whereas official notice of the recommended report and order of the examiner in REA's proceeding discloses that its application is opposed by the American Trucking Association, Inc., and more than 150 motor carriers. The appliaction of REA, a carrier wholly owned by railroads, also raises an important issue which is not present in the instant proceeding; namely, whether under the decisions of this Commission and the Supreme Court the unrestricted authority sought may be granted to a railroad affiliate. See *American Trucking Assns., Inc.*, v. *United States*, 364 U.S. 1. Moreover, the Interstate Commerce Commission frequently grants authorities to more than one applicant to perform overlapping services. See, for example, *Transport, Inc., Extension—Jamestown, N. Dak.*, 69 M.C.C. 667, *W. J. Digby, Inc., Common Carrier Application*, 72 M.C.C.

[*] Other than the Interstate Commerce Commission.

425, and *Everts' Commercial Transport, Inc., Extension—Richmond*, 78 M.C.C. 717. All factors considered, it is concluded that the difference in the applications was apparent on the fact thereof when the REA application was filed; that the applications of REA and applicant are not mutually exclusive in the sense in which that term is used in the *Ashbacker case, supra;* and that the failure to consolidate these proceedings does not preclude the making of a valid recommendation herein.

The need for the proposed service will be next considered. As seen, all of the 193 supporting public witnesses are users of parcel post and want to use the proposed service in lieu thereof. Evidence was adduced by such witnesses and also by stipulation as to the deficiencies which shippers experience in the utilization of this service. The record also shows the many features of applicant's proposal which are superior to parcel post service. Since all of this evidence has been set forth previously in this report and is not disputed, it need not be repeated here.

A number of exhibits introduced in evidence by applicant emphasize that REA does not afford service at many points in the considered territory. The most comprehensive analysis in this regard is that with respect to cities and communities in the proposed service area having populations shown in the Rand McNally Guide. This reveals that of 8,939 such cities and communities, 6,681, or about 75 percent, do not have an REA office or delivery service. Another study by applicant shows that 3,939 destination points in the considered territory were served by applicant under its present authorities during the week of February 20, 1960, of which 46 percent had no REA service, and an analysis of evidence adduced by the 193 shippers supporting the application shows that of the 3,480 points named as destinations for their shipments, about 42 percent had no REA office and no pickup or delivery service. Of 616 origin points for shipments transported by applicant from and to points in the proposed territory during the week ended February 6, 1960, 7.6 percent had no REA office and no pickup or delivery service. REA's analysis of parcel post packages shipped by applicant's present users shown in the 1-day (November 5, 1959) survey indicates that 98.6 percent of the packages originated at points where REA has pickup service and 91 percent were destined to points where REA has delivery service. On the other hand, a study made by applicant of the same data shows that of 2,698 points to which parcel post shipments were delivered on that day, 977 or about 36 percent, do not have pickup or delivery service or an REA office.

REA minimizes the importance of evidence with respect to points not served by it on the ground that the percentage of population served in the considered area is the real criterion as to the scope of the service afforded. In this connection, its analysis with reference to points in the considered territory to which applicant made deliveries during the week of February 20, 1960, shows that of the total population of 25,492,355 residing at such points, 3.6 percent of such persons had no REA service available; 3.3 percent had an REA office located in their communities but no pickup and delivery service available; and 93.1 percent had REA pickup and delivery service available. In the preparation of this exhibit, REA was credited with having pickup and delivery service at all cities where it affords pickup and delivery, and consideration was not given to the fact that at some points its pickup and delivery service extends to an area which is less than the corporate limits of such cities. Using population figures supplied by the Rand McNally Guide, applicant's analysis shows that of the total population of 36,375,900 residing in the considered area, only 68.1 percent of such persons have pickup and delivery service by REA. The facts that 1960 statewide

population estimates by Rand McNally were used by applicant in compiling the total population of the area, that the population figures which were set forth in that publication for the smaller cities and communities consist of 1950 census figures, and that the latter figures were used by applicant in computing the population of such smaller points served by REA, results in the showing of a lower percentage of population having REA delivery service than would be derived from a uniform usage of 1960 estimates.

From the foregoing, it is concluded that the availability of REA service throughout the territory should be determined both on a point served and population basis. While the evidence is somewhat conflicting and there are admitted minor inaccuracies in some of the statistics furnished, it is manifest that there are a large number of small cities and communities which do not enjoy any REA service and that a quite limited percentage of the total population, but nevertheless a fairly large and significant number of persons, do not have such service available. Many of the shippers supporting the proposed operation considered this to be a very definite handicap in the use of REA's service. This is due to the necessity for shippers to deliver shipments to the nearest REA stations where that carrier has no pickup service and no local office and to REA's inability to effect direct deliveries to some customers. Shippers' lack of knowledge as to the destination points at which REA's delivery service is not available also is a complicating factor. Moreover, the evidence shows that at many points where REA service is available through provision of a local office, pickup and delivery service is not afforded. Applicant's proposal to render a complete service from and to all points in the proposed territory and to pickup and deliver from the premises of shippers to the premises of consignees, is a definite element of superiority over the existing service accorded by REA.

In connection with the foregoing, the evidence indicates that REA, primarily because of the large number of joint offices with rail carriers at rail stations, has more telephone listings at which it can be contacted by shippers than applicant. While this is an REA advantage, it is largely overcome by the facts that applicant advertises and solicits widely in the proposed territory; that there are numerous points throughout such area where it can be reached for service; and that its automatic daily pickup call in a large measure obviates a need for frequent telephone contacts.

As seen, about 28 of applicant's supporting shippers evinced dissatisfaction with the amount of time required for delivery of shipments by REA. The latter introduced only one exhibit relating to transit time of freight transported. This covered movements between 7 of the largest cities[10] in the territory covered by the application, and showed that of 1,159 pieces loaded on trains or line-haul trailers on July 19, 1960, 985 were placed on delivery trucks at point of destination on the next day, 147 were similarly placed on the second day, and 27 were so placed after the second day. This evidence only related to operations between selected large cities, where the best service would be expected to be available, under conditions where the carrier's employees were alerted to the fact that a test was being conducted, and does not include the entire time elapsing between the pickup from the shipper and the delivery to the consignee. With respect to the 37 test shipments made by applicant's employees from and to the same 7 cities covered by REA's exhibit, deliveries were effected as follows: 2 on the next day, 24 on the second day, and 11 after the second day. The exhibit introduced by applicant with respect to 1,954 shipments transported by REA intrastate in Ohio shows that deliveries were made as follows: 1.9 percent on

[10] Detroit, Cleveland, Columbus, Cincinnati, Chicago, St. Louis, and Indianapolis.

the same day, 43.2 percent on the next day, 36.7 per ent on the second day, and 18.2 percent subsequent to the second day. This is significant in view of the fact that it involves operations in only one of seven States or portions of States embraced in the proposed territory. The evidence as a whole establishes that REA's service is not as expeditious as applicant's proposal to effect deliveries to points within 100 miles of the point of origin on the next day and to points in the remainder of the territory proposed to be served on a not later than second-day basis.

REA's exhibit showing an illustrative comparison of its charges with those of applicant indicates that REA's first-class charges on shipments weighing 10, 35, 50, and 100 pounds are much higher than those of applicant. Likewise the incentive rates illustrated in REA's exhibit covering shipments of certain of the commodities to which these rates apply received from one shipper and aggregating 1,500 pounds or more in 1 day, are generally higher for shipments weighing 10 and 35 pounds than those of applicant and are near the same level as applicant's charges on shipments of 50 pounds. The illustrative incentive charges are lower than applicant's on shipments of 100 pounds. However, REA's incentive rates are applicable only to certain named commodities and on some of these they apply only from designated shipping points. Its president asserts that only 8 percent of the carrier's traffic moves under such rates. As seen, REA also has minimum charges of $2.36 on some commodities and $2.57 on the remainder applicable to shipments moving from and to points in the considered territory. It is manifest from the oral evidence adduced by some of applicant's supporting shippers and from the fact that all of the 193 shippers supporting applicant, and a majority of the 79 shippers supporting REA's opposition, are parcel post users, that REA's minimum charges and high rate level presently preclude its transportation of a large volume of traffic generally within the weight and size limits of traffic proposed to be transported by applicant and which is now handled by parcel post. REA's position is that lack of volume is primarily responsible for its inability to provide a service on this traffic at rates comparable to those proposed by applicant. The evidence is not convincing, however, that REA will obtain any substantial volume of traffic now transported by parcel post. Nor is REA's contention that applicant's low charges are predicated upon a selection of the cream of the traffic by use of the same kind of restrictions as are included in its proposal substantiated by the record. Actually the evidence establishes that applicant, in its present operations, by the development and use of more efficient methods of handling and consolidation of package shipments, has been able to accord a more expeditious and economical service for traffic of the character formerly handled by parcel post than its competitors. As seen, REA is owned by the railroads and uses rail service principally for intercity transportation. In the language of the Supreme Court, "the ability of one mode of transportation to operate with a rate lower than competing types of transportation is the sort of 'inherent advantage' that Congressional policy requires the Commission to recognize." *Schaffer Transp. Co.* v. *United States*, 355 U.S. 83. To sum up, the evidence establishes that applicant proposes to render a territorially more complete, expeditious, and lower cost service on the traffic covered by its application than that afforded by REA. A public need for such improved service is clearly evident.

REA contends that the granting of the application, through the diversion of traffic to applicant, will adversely affect the level of the rates and the service which it presently affords to the public. As seen, based principally upon sam-

pling counts, REA's research analyst expressed the opinion that it transported about 340,000 pieces a month which were exposed to such diversion. REA's assistant vice president estimates that it would lose about 85 percent of the volume exposed to diversion if the application is granted. REA's president also estimates that the granting of the application would result in the loss of about 2 million shipments a year, involving an annual net loss to that carrier of about $5 million. It is significant, however, that the assistant vice president had only been employed by REA for about 6 months prior to the date of the hearing and that his most recent prior experience and his contacts after employment with REA had been confined to shippers connected with the automotive industry. Neither the assistant vice president nor the president of REA knew the volume of traffic which that carrier transported in intrastate commerce in any part of the territory here involved or in interstate commerce from Chicago, before and after applicant commenced such operations.

The evidence of public witnesses adduced herein does not substantiate REA's estimates of diversion. In this connection, about 40 percent of the 193 shippers supporting the application do not use REA's service or use it only occasionally. Others use it for the transportation of packages exceeding applicant's weight or size limits or for the movement of commodities which because of their nature would not be forwarded in applicant's service. These include explosives, narcotics, poisons, and valuable articles. A substantial portion of the traffic obtained by REA from the 79 companies which supported its opposition moves to or is received from points outside of the proposed territory, and, therefore, is not exposed to diversion to applicant. With respect to traffic which moves solely within the considered territory, all except seven of these concerns indicated that they were not interested in applicant's proposal because of certain features in REA's service which were more suitable to their requirements. These include transportation of highly perishable freight, live animals, large volume movements in a short period of time, shipments exceeding weight or size limitations in applicant's proposal, shipments on which the freight is paid by the consignees, and high value shipments. Likewise, some of these shippers require more than one pickup a day or desire the furnishing of an express receipt for each shipment tendered. Others are influenced by the availability of local REA offices and the susceptibility of their traffic to REA's incentive rates.

REA's present average weight per shipment is about 48 pounds and its average weight per piece is about 26 pounds. Applicant's average weight per package is about 10 pounds. While it is apparent that there is an overlapping in weight and size of shipments proposed to be transported by applicant with those now transported by REA, the bulk of the traffic handled by applicant in its existing authorized service weighs much less than that moving by REA. The logical conclusion to be drawn from the evidence set forth in the preceding paragraph is that in providing a fast low-cost service, applicant has sacrificed a number of service features which are attractive to customers of REA, which factor precludes the diversion of any appreciable amount of REA traffic to applicant within the overlapping weight and size brackets. This is borne out by applicant's analysis of REA shipping records used in applicant's proceeding seeking intrastate rights in Ohio and a similar analysis in a proceeding seeking similar rights in New York State, previously discussed herein. These showed that REA transported as high a percentage of shipments in the 1 to 50 pounds bracket from and to points where applicant rendered service on this traffic as from and to points where it did not render such service. Actually a division of traffic be-

tween a low-cost service and the more varied service of REA in the proposed territory already has been accomplished by parcel post. There also are some indications that REA is endeavoring to obtain more shipments in weight brackets higher than those involved herein. All factors considered, it is concluded that the proposed service will not result in any appreciable diversion of traffic from REA, and that the advantage of the proposed service outweigh in importance any adverse effects which may result from a limited diversion of traffic from that carrier.

The authority of the opposing motor carriers has been previously set forth and need not be repeated here. Of these, Orscheln Bros., has minimum charges applicable to the handling of shipments weighing 100 pounds or less and its rates admittedly are much higher than applicant's on shipments weighing from 1 to 50 pounds. This carrier transports from 1,800 to 2,200 shipments a day, but its exhibit, listing shipments handled during a representative 5-day period, shows that only 40 shipments, or an average of 8 a day, weighed less than 50 pounds. This exhibit does not include shipments moving by Orscheln Bros., from St. Louis, from which about 50 percent of its interstate freight originates. Tucker also has minimum charges on shipments weighing less than 100 pounds. Its exhibit shows that only 39 shipments weighing 100 pounds or less were transported on 3 representative days in March 1960. The revenue derived therefrom amounted to $31.12 a day. Tucker's operating revenue in 1959 was $1,600,000. Elfrink, which appeared in support of the protest filed by Tucker, was only interested in the application insofar as it might affect traffic which it now transports between St. Louis and Cape Girardeau. The evidence of the aforementioned carriers clearly shows that their revenue from traffic which would be exposed to diversion by applicant is an insignificant portion of that received from their overall operations. Their operations include a very limited number of the points proposed to be served by applicant, and they are not able to render the complete service, territorially and otherwise, proposed by applicant. Their opposition does not warrant a denial of any portion of the application.

Sloan's is engaged in the household moving and storage business, general hauling, and parcel delivery service. In 1959 this carrier had operating revenues of $948,592, of which about 50 percent was obtained from its parcel delivery business. A survey during a 10-day period from June 20 through July 1, 1960, disclosed that 25,878 packages were transported in both intrastate and interstate commerce, of which only 3,594, or about 14 percent of all packages surveyed, were transported in interstate commerce in the wholesale type of service proposed herein. Only a very small part of Sloan's overall traffic is exposed to diversion to applicant, and such exposure is with respect to a type of traffic as to which Sloan's has demonstrated an ability to withstand applicant's competition in intrastate commerce and in the St. Louis commercial zone. As seen, even with the authority recently granted, this carrier can only transport packages between St. Louis, on the one hand, and, on the other, very limited areas in Missouri and Illinois. Because of the territorial limitations in its authority, Sloan's cannot provide the complete service which is proposed by applicant and shown to be needed. All factors considered, it is concluded that the evidence submitted by Sloan's does not warrant a partial denial of the application. Compare *United Parcel Service of New York, Inc., Com. Car Applic.*, 79 M.C.C. 629, at page 653.

REA on brief urges that restrictions imposed by applicant cannot feasibly be administered and that applicant must demonstrate a willingness and ability

to comply with them before it can receive a grant of authority herein. Protestant takes the position that the restrictions against transportation of packages exceeding 108 inches in length and girth combined or of packages weighing in the aggregate more than 100 pounds from one consignor at one location to one consignee at one location on a given day cannot be enforced. It takes the same position with respect to the proposed restrictive provision that each package shall be considered as a separate shipment. The first and last restrictions referred to have been considered and imposed in three proceedings involving applicant or its affiliate; i.e., *United Parcel Service, Inc., Common Carrier Application* 68 M.C.C. 199, *United Parcel Service of New York, Inc., Com. Car. Applic., supra*, and No. MC-115495 (Sub-No. 2), *United Parcel Service, Inc., Ext.—Arizona and California*,[11] 83 M.C.C. 810 (not printed in full), decided May 17, 1960. The remaining restriction has been imposed in the *New York* case. They have been included in applications or amendments thereto filed by United Parcel Service companies to prevent encroachment of their operations in the general trucking field and thereby to eliminate the opposition of carriers engaged therein. No evidence is presented to substantiate REA's position and there is no basis for reaching any conclusion with respect thereto differing from those in the cited proceedings.

REA also contends that the restrictions against the rendition of service (1) between department stores, specialty shops, and retail stores and the branches or warehouses of such stores, or (2) between department stores, specialty shops, and retail stores or the branches or warehouses thereof, on the one hand, and, on the other, the premises of the customers of such stores, cannot be properly administered. Reference is made to the willingness of applicant's employees to provide service for the Angola Dress Shop, a retail store. The details with respect to this matter previously have been set forth and need not be repeated here. The evidence shows that the witness represented her proposed shipments as wholesale in character, and thus might have mislead applicant's employees with respect to the nature of her business. Admittedly the billing of the witness as the Angola Dress Company indicates some doubt on the part of applicant's employee as to the status of her business. Similarly REA refers to the fact that of seven overweight shipments tendered by its special agents to applicant, five weighing over 50 pounds were accepted by applicant's drivers. The evidence shows that one of these shipments weighted 52 pounds, one weighed 54 pounds, and three weighed 53 pounds. On two, the pickup sheets were changed by the special agent, at the driver's suggestion, to show the weights as 50 pounds. On one of these shipments the driver was advised that the 53-pound weight was in the nature of an estimated weight. The Commission, division 1, in the *Chicago* and *New York* cases imposed both the retail store and 50-pound restrictions and also imposed the latter in the *California* case. It is apparent that applicant's employee was not diligent with reference to insuring compliance with the retail store limitation and that applicant's drivers were delinquent in failing to enforce the 50-pound weight restriction. It is noted that applicant's vice president had no knowledge of any complaints from regulatory agencies with respect to infractions of this sort, and that prior to the close of the hearing applicant warned its district managers and others to prevent the occurrence of any others. Like others previously considered, the 50-pound weight restriction was included in the application to prevent encroachment of the proposed operations into the general trucking field and to eliminate opposition by carriers en-

[11] Hereinafter, for convenience, referred to as the *Chicago* case, *New York* case, and *California* case, respectively.

gaged therein. While the aforementioned violations are not to be condoned, they fall short of establishing that the two considered restrictions cannot be satisfactorily administered or that applicant is unfit to conduct the proposed operation.

REA strongly urges that applicant's $2 per week charge for daily pickup service results in discrimination against infrequent shippers, particularly individuals desiring to make shipments from their residences. The evidence herein shows that in most instances involved in REA's investigation applicant's employees evinced a willingness to pick up and transport individual shipments from private residences upon payment of the weekly service charge. In a limited number there was a refusal to do so and in a few others such shippers were discouraged from using applicant. It is noted that, although applicant rarely receives requests for one-package shipments, specific instructions now have been issued to applicant's employees to eliminate any misunderstanding as to its holding out to serve shippers in this category. REA's contention in this regard was pressed in the *New York* case and was held not to be grounds for denial of the application. It also was considered not to be a proper basis for reversing the Commission's decision in the *Chicago* case by the district court in *Railway Exp. Agency, Inc.*, v. *United States*, 153 F. Supp. 738, affirmed *per curiam* by the United States Supreme Court, 355 U.S. 270. There is no showing that REA has challenged the tariff covering this charge in an appropriate rate proceeding. There also is no evidence of unwillingness on the part of applicant to accept shipments brought into its offices to avoid the service charge. In this respect, it makes available to such shippers a service comparable to that of REA at points where the latter has no pickup and delivery service. The fact that the proposed service may be more attractive to certain shippers than to others affords no real basis for denial of the application.

REA also argues that the proposed service is regular route in character; that there is no evidence as to which regular routes should be authorized; and that accordingly the application should be denied. In this connection, REA asserts that the proposed operation conforms to the criteria prescribed in *Transportation Activities, Brady Transfer & Storage Co.*,[12] 47 M.C.C. 23, as indicative of regular route service. In this regard it urges that applicant proposes to transport less-than-truckload freight for numerous shippers; that its numerous operating centers and hubs are the equivalent of fixed terminals and call stations; that its proposed daily pickup calls on shippers and daily operations between operating centers and hubs, and between hubs denote operations according to a predetermined plan and periodicity of service; that contemplated next-day or second-day deliveries involve the equivalent of schedules; and that applicant engages in intense solicitation. Protestant asserts that a large proportion of applicant's traffic moves from and to the larger cities in the proposed territory and that this also is indicative of regular route service. There is no doubt that applicant's operations have characteristics of regular route service. However, in the *Brady* case, *supra*, the Commission, division 5, at page 49, said:

> In other words, a bona fide irregular route carrier may under conceivable circumstances do many things suggestive or indicative of a regular route, even a combination of them, without unlawfully converting its operation into one over regular routes. But each of such practices is none the less suggestive of a regular route service and when, as here, the number of such practices indulged in is substantial, and *when they are not explained or justified by any special circumstances*, they cumulate and compel the conclusion that conversion to a regular route operation has been accomplished. [Emphasis supplied.]

[12] Hereinafter referred to as the *Brady* case.

At page 52, it was further stated:

We are, however, reluctantly compelled to the conclusion that it is impossible in this case, or in any other, to lay down a general rule by which the regular or irregular route character of all operations can be determined. Too much depends upon the peculiar characteristics of each considered operation and upon the surrounding circumstances. *We are convinced that each must be judged on its own particular facts. In our review of the various tests, we have hypothesized operations characterized by practices which, though ordinarily very significant, were completely outweighed by other unusual circumstances. When this can be done, no general rule can be framed to fit all cases.* [Emphasis supplied.]

At page 39, the purpose of enforcing the distinction between regular and irregular route operations was stated as follows:

In a sense, regular-route operations are restricted territorially and limited to the use of specified highways. Over those highways, however, they are permitted, and expected, to render a type of service not permitted to irregular route carriers. In contrast, irregular-route carriers are not restricted territorially, except, generally, to certain boundaries. Within these boundaries of their authority, they may reach over any convenient route or routes any authorized point. But though freer territorially than regular route carriers, they are restricted in other respects, namely, in the character of the service which they may render. It is imperative that they be so limited if, consistently with the national transportation policy, *regular route operators, between points between which ample regular route service is already being furnished, are to be protected from destructive competitive competition.* [Emphasis supplied.]

Here it is clear that there are factors which constitute special circumstances within the meaning of the *Brady case, supra.* In this connection, the service which applicant proposes extends between all points in the proposed territory and its overall character is territorial. The mere fact that it will be necessary for applicant to regularly use certain highways between operating centers and hubs and between hubs on a daily basis in order to provide efficient, expeditious, and economical handling of the particular type of freight here involved does not change the basic character of the service offered to the public. Moreover, the reason for requiring irregular route carriers having more than the usual number of regular route characteristics to obtain regular route authority or else alter the nature of their operations is, as stated, for the protection of the regular route motor carriers. Here there is no opposition by regular route carriers, except Orscheln Bros. and Tucker, because of the restrictions voluntarily incorporated in applicant's proposal. As seen, neither of the excepted carriers will be affected to any appreciable extent by a grant herein to applicant. In the circumstances, it is concluded that there are special or unusual factors in the proposed operation which outweigh in importance the presence of a number of regular route characteristics, and that the evidence clearly shows that the proposed operation, considered in its entirety, is essentially an irregular route service. This conforms to the action of the Commission, division 1, in the *Chicago, New York,* and *California* cases in granting irregular route authority for the same type of operation. Compare also *Overnite Transp. Co. Ext.—Conversion to Regular Routes,* 79 M.C.C. 231.

REA also asserts that the support of applicant's proposal by shippers appearing on its behalf is predicated upon its proposed low rate level and that it has failed to sustain its burden of proving that the level of charges which it intends to inaugurate can be maintained. As stated, applicant's proposal

contemplates the provision of service at charges comparable to those of parcel post. A detailed analysis of REA's criticism of cost data presented by applicant would require discussion more extended than is warranted in an application proceeding. However, applicant's per package cost estimate for pickup of 6.2 cents is protestant's principal target, representing a reduction in the cost of 8.3 cents experienced in the presently authorized operations. The evidence shows that the estimated reduction in pickup cost is predicated primarily upon applicant's anticipation that additional packages obtained from a grant of authority herein will be received from customers presently using the intrastate service provided by it or its affiliates and the conclusion that the new anticipated volume of packages moving in interstate commerce superimposed upon the present volume moving in intrastate commerce will increase the number of packages picked up at each stop, resulting in a decrease in the per package cost per stop. REA, however, challenges this cost estimate on the grounds that during the period from 1955 to 1959 the number of packages in the involved territory handled by applicant and its affiliates per pickup stop declined from 10.48 to 7.79 per stop. On rebuttal, applicant points out that its operations and those of its affiliates in the proposed territory during the 1955–59 period were subject to continual expansion as grants of authority intrastate within the considered States, and interstate from Chicago, were obtained. The increased number of packages during this period, therefore, were from new customers, involving in each instance an increase in the number of stops. On the other hand, as stated, in the proposed operation applicant anticipates mainly an increase in the number of packages from customers now served in intrastate commerce. It is logical that this would be the primary source of applicant's new traffic, particularly at the outset of its interstate operations. While it is also likely that applicant will obtain some traffic from new customers, particularly as the operation matures, it is doubtful that this will materially affect its ability to operate at charges comparable to those of parcel post. In this connection, it is noted that applicant's per package costs for pickup and delivery are those least affected by the proposed operation in interstate commerce, and that substantially increased costs per package have been estimated by applicant for its transfer and central sorting functions. The latter are the costs principally affected, because of the longer distance and increased handling involved in the transportation of packages in interstate commerce. Moreover, REA's exhibit discloses that applicant's proposed charges from and to points selected by this protestant are lower than those of parcel post, thus giving applicant room for adjustment of its charges, if necessary, because of a possible miscalculation of estimated costs. The fact that applicant and its affiliates have maintained rates comparable to those of parcel post in their presently authorized operations also is a significant indication of applicant's ability to do so in the future. Furthermore the many advantages afforded by applicant's proposed operation over parcel post service constitutes an effective inducement for use by shippers even at rates higher than the parcel post level. This contention is not meritorious.

There remains for consideration the question as to whether under section 210 of the act the permits held by applicant and its affiliates and the certificates sought in this proceeding may be held consistently with the public interest and the national transportation policy. The contract carrier operations of applicant's affiliates in interstate commerce are not conducted in the territory embraced in this application, and this matter need not be further considered. The contract carrier authority held by applicant and the operations performed there-

under have been set forth previously in this report and need not be repeated here. On brief, applicant urges that, except for the handling of deliveries of new furniture and household furnishings to southern Indiana for the six Cincinnati stores served in this movement, there would be no dual operations problem involved in this case. This is not so. The 50 retail department stores in Cincinnati for which applicant delivers merchandise in Kentucky beyond the Cincinnati commercial zone are located within the same territory as is proposed to be served herein and are a factor to consider in connection with the dual operations problem. Actually the situation here, except for the lower volume of traffic which it is estimated will move to the Cincinnati retail stores, is identical with that considered in the *New York* case where a restriction was imposed to prevent service on behalf of retail stores which might be served in both the considered common and contract carrier service. In both this case and the *New York* case the shippers would prepay the freight charges, thereby eliminating privity between receiving retail stores and applicant in the wholesale operation. Nevertheless, applicant can, on its own volition, alter this arrangement at any time. Moreover, as pointed out in the *New York* case, it is possible that some consignees, even in the absence of privity of contract with applicant, may still be able to control shipments moving in the wholesale service. Here, as in the *New York* case, applicant estimates that about 1 percent of its deliveries will be made to retail stores served under its contract carrier authority. While the estimated volume of such traffic at the commencement of the operation is much less than that involved in the *New York* case, such volume will increase as the operation matures. In any event, the purpose of section 210 is to prevent the opportunity for discrimination and this may be readily accomplished by imposing the same restriction against serving retail stores under contract with applicant as was imposed in the *New York* case. Applicant admits that the effect of this restriction upon its volume of traffic will be slight, and imposition thereof will insure the fulfillment of the Commission's statutory obligation. In accordance with the Commission's policy, a reservation of the right to impose terms, conditions, and limitations in the future to insure that the dual operations will remain consistent with the public interest and the national transportation policy will also be included in the findings.

The examiner finds that the present and future public convenience and necessity require operation by applicant as a common carrier by motor vehicle, in interstate or foreign commerce, over irregular routes, of general commodities, except those of unusual value, class A and class B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between the points, and in the manner and subject to the restrictions described in appendix A hereto, and subject to the following additional restriction and condition: (1). That no delivery service shall be provided under the authority granted herein to the premises of persons who or which have entered into contracts with applicant and are served by it pursuant to permits issued by the Commission, and (2) that the certificate granted herein shall be subject to the right of the Commission, which is hereby expressly reserved, to impose such terms, conditions, or limitations in the future as it may find necessary in order to insure that applicant's operations shall conform to the provisions of section 210 of the Interstate Commerce Act.

The examiner further finds that applicant is fit, willing and able properly to perform such service and to conform to the requirements of the act and the Commission's rules and regulations thereunder; that an appropriate certificate

should be issued; that the application in all other respects should be denied; and that the holding by applicant of the certificate herein granted and the holding by it and its affiliates of the permits heretofore issued to them, will be consistent with the public interest and the national transportation policy.

APPENDIX A

Territory sought

Between all points in a territory comprised of the following States or portions thereof as follows: Illinois, Indiana, Ohio; that portion of Michigan within an area described as follows: From Detroit north along the Michigan State line to Port Huron, thence westerly along Michigan Highway 21 to Davison; thence northerly along Michigan Highway 15 to Bay City; thence westerly along Michigan Highway 20 to Mount Pleasant; thence southerly along U.S. Highway 27 to U.S. Highway 27 (alternate); thence southerly along U.S. Highway 27 (alternate) to Alma; thence easterly along U.S. Highway 27 (alternate) to U.S. Highway 27; thence southerly along U.S. Highway 27 to Ola; thence westerly along Michigan Highway 57 to the eastern boundary of Kent County; thence along the eastern and northern boundaries of Kent County to the northern boundary of Muskegon County; thence along the northern and eastern boundaries of Muskegon County (including all of Kent and Muskegon Counties) to Lake Michigan; thence southerly along the Michigan State line to the Indiana State line; thence easterly along the Michigan State line to Lake Erie; and thence northerly along the Michigan State line to Detroit; that portion of Wisconsin within an area described as follows: Beginning at the Illinois-Wisconsin State line at Lake Michigan and extending northerly along the shore of Lake Michigan to and including Two Rivers; thence northerly on Wisconsin Highway 147 to U.S. Highway 141; thence northerly on U.S. Highway 141 to and including Green Bay; thence southerly on U.S. Highway 41 to the northern boundary of Fond du Lac County; thence westerly and southerly along the northern and western boundaries of Fond du Lac County to the northern boundary of Dodge County; thence westerly and southerly along the northern and western boundaries of Dodge County to U.S. Highway 151; thence southwesterly on U.S. Highway 151 to the northern boundary of Dane County; thence along the northern, western, and southern boundaries of Dane County to the western boundary of Rock County; thence southerly along the western boundary of Rock County to the Wisconsin-Illinois State line; and thence easterly along such line to Lake Michigan; that portion of Missouri within an area described as follows: From St. Louis northwesterly along the Mississippi River to Hannibal, Mo.; thence northerly along Missouri Highway 168 to U.S. Highway 24–61; thence southerly along U.S. Highway 24–61 to U.S. Highway 36; thence easterly along U.S. Highway 36 to U.S. Highway 61; thence southerly along U.S. Highway 61 to Missouri Highway 19; thence southwesterly and southerly along Missouri Highway 19 to U. S. Highway 54; thence westerly along U.S. Highway 54 to Missouri Highway 22; thence westerly along Missouri Highway 22 to U.S. Highway 63; thence northerly along U.S. Highway 63 to U.S. Highway 24; thence westerly along U.S. Highway 24 to Missouri Highway 3; thence southerly along Missouri Highway 3 to Missouri Highway 240; thence southerly along Missouri Highway 240 to the Missouri River; thence southeasterly along the Missouri River to Jefferson City; thence southeasterly along U.S. Highway 63 to Rolla; thence easterly along U.S. Highway 63 to U.S. Highway 66; thence easterly along U.S. Highway 66 to Missouri Highway 68; thence southerly along Missouri Highway 68 to Missouri Highway 8; thence easterly along Missouri Highway 8 to Missouri

Highway 21; thence southerly along Missouri Highway 21 to Missouri Highway 72; thence southeasterly along Missouri Highway 72 to the Mississippi River; thence northwesterly along the Mississippi River to the point of beginning; and Davenport, Clinton, and Dubuque, Iowa, including all points on the described highways and those on the described county lines which do not coincide with State lines.

Restriction:

(*a*) No service shall be rendered in the transportation of any package or article weighing more than 50 pounds or exceeding 108 inches in length and girth combined, and each package or article shall be considered as a separate and distinct shipment.

(*b*) No service shall be rendered between department stores, specialty shops, and retail stores and the branches or warehouses of such stores; or between department stores, specialty shops, and retail stores or the branches or warehouses thereof, on the one hand, and, on the other, the premises of the customer of such stores.

(*c*) No service shall be provided in the transportation of packages or articles weighing in the aggregate more than 100 pounds from one consignor at one location to one consignee at one location on any one day.

APPENDIX B

Certificate held by applicant

Irregular routes:

General commodities, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment.

From Chicago, Ill., to Davenport, Clinton, and Dubuque, Iowa; points in and west of Muskegon, Kent, Barry, Calhoun, and Branch Counties, Mich.; points in that part of Indiana on and north of a line beginning at the intersection of U.S. Highway 36 and the Indiana-Illinois State line and extending along U.S. Highway 36 through Indianapolis, Ind., to junction Indiana Highway 67 near Pendleton, Ind., thence along Indiana Highway 67 through Muncie, Ind., to Portland, Ind., and thence along Indiana Highway 26 to the Indiana-Ohio State line; points in that part of Illinois on, north, and east of a line beginning at the intersection of U.S. Highway 36 and the Illinois-Indiana State line and extending along U.S. Highway 36 through Decatur, Ill., to Springfield, Ill., thence along Illinois Highway 97 to Galesburg, Ill., thence along U.S. Highway 150 to Moline, Ill., and thence along the Mississippi River to the Illinois-Wisconsin State line; and points in that part of Wisconsin in and east of Rock, Dane, Dodge, and Fond Du Lac Counties, Wis.; and

Returned shipments of the above-specified commodities which carrier has previously delivered,

From the above-specified destination points to Chicago, Ill.

Restriction: The service authorized herein is subject to the following conditions:

No service shall be rendered in the transportation of any package or article weighing more than 50 pounds or exceeding 108 inches in length and girth combined, and, for the purpose of this restriction, each package or article shall be considered as a separate and distinct shipment.

No service shall be rendered between retail stores and the branches or warehouses of such stores; or between retail stores and the branches and warehouses

thereof, on the one hand, and, on the other, the premises of customers of such stores.

APPENDIX C

General commodities, except commodities of unusual value, dangerous explosives, commodities in bulk, commodities requiring special equipment, and household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467, restricted to parcels not exceeding 100 pounds, each parcel to constitute a separate shipment, over irregular routes,

Between St. Louis, Mo., on the one hand, and, on the other points in that part of Illinois bounded on the west by the Mississippi River, and on the east, north and south by a line beginning at Chester, Ill., and extending along Illinois Highway 150 to junction Illinois Highway 154, thence along Illinois Highway 154 to junction U.S. Highway 51, thence along U.S. Highway 51 to junction Illinois Highway 15, thence west along Illinois Highway 15 to junction Illinois Highway 127, thence north along Illinois Highway 127 to junction U.S. Highway 50, thence east along U.S. Highway 50 to junction U.S. Highway 51, thence north along U.S. Highway 51 to Decatur, Ill., thence west along U.S. Highway 36 to Springfield, Ill., thence along combined U.S. Highways 36 and 54 to junction U.S. Highways 36 and 54, and thence along U.S. Highway 36 to the Mississippi River, including points on the indicated portions of the highways specified.

89 M.C.C.

U. S. GOVERNMENT PRINTING OFFICE: 1943